Applicant Details

First Name	**Jacob**
Middle Initial	**V**
Last Name	**McCall**
Citizenship Status	**U. S. Citizen**
Email Address	**mccalljv@gmail.com**
Address	**Address** Street **1392 Danville Blvd., Apt. 101** City **Alamo** State/Territory **California** Zip **94507** Country **United States**
Contact Phone Number	**704-698-5468**

Applicant Education

BA/BS From	**University of California-Berkeley**
Date of BA/BS	**May 2019**
JD/LLB From	**Stanford University Law School** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90515&yr=2011**
Date of JD/LLB	**June 11, 2022**
Class Rank	**School does not rank**
Law Review/ Journal	**Yes**
Journal(s)	**Stanford Journal of Civil Rights and Civil Liberties**
Moot Court Experience	**No**

Bar Admission

Admission(s)	**New York**

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Merino, Jeanne
jmerino@law.stanford.edu
6507258526

Persily, Nathaniel
npersily@law.stanford.edu
650-725-9875

Brodie, Juliet
jmbrodie@law.stanford.edu
(650) 725-9200

References

Timothy Mellett
DOJ, Deputy Chief of the Voting Section
202-598-0469
Timothy.F.Mellett@usdoj.gov

Inder Comar
Just Atonement, Inc.
415-640-5856
inder@justatonement.org

Zahavah Levine
Healthy Elections Project and Stanford Public Interest Redistricting Project
415-786-2384
zahavah.levine@gmail.com

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jacob McCall

1392 Danville Blvd., Apt. 101 | Alamo, CA 94507 || (704) 698-5468 | mccalljv@gmail.com

June 21, 2023

The Honorable Patrick Casey Pitts
United States District Court for the Northern District of California
Robert F. Peckham United States Courthouse
280 South First Street
San Jose, CA 95113

Dear Judge Pitts:

I am an early-career public interest attorney and am writing to apply for a clerkship position in your chambers starting in 2023. As a Stanford alum and lover of the South Bay, I am eager to return to an area of family and friends to clerk and practice. I would love to work in your chambers because of your past work promoting the public interest, especially regarding unions. I also hope to join your chambers because I will excel in a fast-paced and hard-working environment, and I want to help build an effective team that is also a supportive community.

Enclosed please find my resume, law school transcript, and two writing samples for your review. The first writing sample is an ethics complaint I drafted through my work at the 65 Project. This complaint, and many like it, was to hold to account the attorneys who tried to overturn elections through frivolous lawsuits. The second writing sample is a memorandum examining potential fundamental rights violations within the framework of climate change. Also enclosed are letters of recommendation from Professor Juliet Brodie (650-724-2507), Professor Nathaniel Persily (650-725-9875), Professor Jeanne Merino (650-725-8526), along with additional references.

I welcome the opportunity to further discuss my candidacy. Thank you for your consideration.

Sincerely,

Jacob McCall

RECOMMENDERS

Professor Nate Persily
Stanford Law School
917-570-3223
npersily@law.stanford.edu

Professor Juliet Brodie
Stanford Law School
650-724-2507
jmbrodie@law.stanford.edu

Jeanne Merino
Stanford Law School
650-725-8526
jmerino@law.stanford.edu

REFERENCES

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Zahavah Levine
Healthy Elections Project and Stanford Public Interest Redistricting Project
415-786-2384
zahavah.levine@gmail.com

Jacob McCall

1392 Danville Blvd., Apt. 101, Alamo, CA 94507 • mccalljv@gmail.com • (704) 698-5468

EDUCATION

Stanford Law School, Stanford, CA **June 2022**
J.D.
Activities: *Stanford Journal of Civil Rights and Civil Liberties* (Special Issue Editor-in-Chief); Economic Advancement Pro Bono Project (Clinical Supervisor); Election Law Project (President); American Constitution Society
Relevant Coursework: Constitutional Law, Administrative Law, State Constitutional Law, Law of Democracy, Fourteenth Amendment, Statutory Interpretation, Community Law Clinic, Advanced Civil Procedure, Critical Race Theory, Evidence, Federal Courts, First Amendment

University of California, Berkeley, Berkeley, CA **May 2019**
B.A., Political Science; minor in Human Rights
Honors: Graduation with Highest Distinction, Phi Beta Kappa
Activities: Undergraduate Economics Association, Italian Society, Cal Berkeley Democrats

EXPERIENCE

The 65 Project, Washington, DC **August 2022 – Present**
Ethics Attorney

Draft ethics complaints against attorneys who filed fraudulent lawsuits in the aftermath of the 2020 election. Research court filings and ethics rules to build a case against election-denying attorneys.

ACLU Voting Rights Project, New York, NY **January 2022 – March 2022**
Legal Intern

Drafted memoranda on ongoing and pending redistricting litigation. Researched Voting Rights Act compliance and jurisprudence based on racial discrimination and dilution. Assisted with trial and evidentiary related matters.

U.S. Department of Justice, Civil Rights Division, Voting Section, Washington, DC **June – August 2021**
Legal Intern

Conducted legal research on voting acts and election law compliance in several states. Drafted legal memoranda on voting-related litigation. Investigated school districts for violations of Section 2 of the Voting Rights Act.

The Stanford Redistricting Project, Stanford, CA **May 2021 – January 2022**
Research Assistant

Generated non-partisan redistricting maps for state legislators and other stakeholders. Crafted least-change, good governance, and proportional maps for multiple states. Mastered redistricting software.

Stanford Community Law Clinic, Stanford, CA **January – March 2021**
Clinical Student

Represented clients at trial in record expungement and social security benefits cases. Conducted intakes for new clients and gathered evidence. Filed motions, briefs, replies, and declarations for housing, expungement, and social security matters. Guided clients in trial preparation before their appearances.

Stanford-MIT Healthy Elections Project, Stanford, CA **April – December 2020**
Research Manager

Published and wrote memoranda detailing election issues related to COVID. Drafted election post-mortem and voting issue reports to aid policymakers for future elections. Administered recruitment program for poll workers.

Just Atonement, Inc., New York, NY **June – August 2020**
Legal Intern; Policy Advocate

Commenced litigation in California state court combating climate change. Prepared memoranda for the United Nations on various human rights issues, including the rise of authoritarianism during COVID and country reports.

Leland Stanford Jr. University
School of Law
Stanford, CA 94305
USA

Law Unofficial Transcript

Name : McCall,Jacob Vaughn
Student ID : 06240122

Print Date: 07/07/2022

--------- Stanford Degrees Awarded ---------

Degree : Doctor of Jurisprudence
Confer Date : 06/12/2022
Plan : Law

--------- Academic Program ---------

Program : Law JD
09/23/2019 : Law (JD)
Plan
Status Completed Program

--------- Beginning of Academic Record ---------

2019-2020 Autumn

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	201	CIVIL PROCEDURE I	5.00	5.00	P	
Instructor:		Spaulding, Norman W.				
LAW	205	CONTRACTS	5.00	5.00	P	
Instructor:		Morantz, Alison				
LAW	219	LEGAL RESEARCH AND WRITING	2.00	2.00	P	
Instructor:		Alexander, Yonina				
LAW	223	TORTS	5.00	5.00	P	
Instructor:		Sykes, Alan				
LAW	240D	DISCUSSION (1L): CRIMINAL LEGAL HISTORIES	1.00	1.00	MP	
Instructor:		Fisher, George				

LAW TERM UNTS: 18.00 LAW CUM UNTS: 18.00

2019-2020 Winter

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	203	CONSTITUTIONAL LAW	3.00	3.00	MPH	
Instructor:		Meyler, Bernadette				
LAW	207	CRIMINAL LAW	4.00	4.00	MPH	
Instructor:		Sklansky, David A				
LAW	224A	FEDERAL LITIGATION IN A GLOBAL CONTEXT: COURSEWORK	2.00	2.00	MPH	
Instructor:		Merino, Jeanne E.				
LAW	7016	CRITICAL RACE THEORY	1.00	1.00	MP	
Instructor:		Mack, Kenneth W.				
LAW	7036	LAW OF DEMOCRACY	3.00	3.00	MPH	
Instructor:		Persily, Nathaniel A.				

LAW TERM UNTS: 13.00 LAW CUM UNTS: 31.00

2019-2020 Spring

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	217	PROPERTY	4.00	4.00	MPH	
Instructor:		Anderson, Michelle W				
LAW	224B	FEDERAL LITIGATION IN A GLOBAL CONTEXT: METHODS AND PRACTICE	2.00	2.00	MPH	
Instructor:		Merino, Jeanne E.				
LAW	2401	ADVANCED CIVIL PROCEDURE	3.00	3.00	MPH	
Instructor:		Sinnar, Shirin A				
LAW	7010	CONSTITUTIONAL LAW: THE FOURTEENTH AMENDMENT	3.00	3.00	MPH	
Instructor:		Schacter, Jane				

LAW TERM UNTS: 12.00 LAW CUM UNTS: 43.00

2020-2021 Autumn

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	807V	POLICY PRACTICUM: ELECTION PROTECTION IN THE TIME OF COVID	2.00	2.00	H	
Instructor:		Persily, Nathaniel A.				
LAW	2002	CRIMINAL PROCEDURE: INVESTIGATION	4.00	4.00	P	
Instructor:		Weisberg, Robert				
LAW	6001	LEGAL ETHICS	3.00	3.00	P	
Instructor:		Rhode, Deborah L				
LAW	7005	CONSTITUTIONAL POLITICS	2.00	2.00	P	
Instructor:		Schacter, Jane				
LAW	7041	STATUTORY INTERPRETATION	3.00	3.00	P	
Instructor:		Schacter, Jane				

Worksheet - For office use by authorized Stanford personnel Effective Autumn Quarter 2009-10, units earned in the Stanford Law School are quarter units. Units earned in the Stanford Law School prior to 2009-10 were semester units. Law Term and Law Cum totals are law course units earned Autumn Quarter 2009-10 and thereafter.

Leland Stanford Jr. University
School of Law
Stanford, CA 94305
USA

Law Unofficial Transcript

Name : McCall,Jacob Vaughn
Student ID : 06240122

LAW TERM UNTS: 14.00 LAW CUM UNTS: 57.00

2020-2021 Winter

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	902A	COMMUNITY LAW CLINIC: CLINICAL PRACTICE	4.00	4.00	P	
Instructor:		Brodie, Juliet M. Douglass, Lisa Susan Jones, Danielle				
LAW	902B	COMMUNITY LAW CLINIC: CLINICAL METHODS	4.00	4.00	P	
Instructor:		Brodie, Juliet M. Douglass, Lisa Susan Jones, Danielle				
LAW	902C	COMMUNITY LAW CLINIC: CLINICAL COURSEWORK	4.00	4.00	H	
Instructor:		Brodie, Juliet M. Douglass, Lisa Susan Jones, Danielle				

LAW TERM UNTS: 12.00 LAW CUM UNTS: 69.00

2020-2021 Spring

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	1029	TAXATION I	4.00	4.00	P	
Instructor:		Goldin, Jacob				
LAW	2001	CRIMINAL PROCEDURE: ADJUDICATION	4.00	4.00	P	
Instructor:		Weisberg, Robert				
LAW	7501	CARROTS, STICKS, NORMS, AND NUDGES: CHANGING MINDS AND BEHAVIORS	3.00	3.00	P	
Instructor:		MacCoun, Robert J				

LAW TERM UNTS: 11.00 LAW CUM UNTS: 80.00

2021-2022 Autumn

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	808I	POLICY PRACTICUM: DRAW CONGRESS: STANFORD REDISTRICTING PROJECT	3.00	3.00	H	
Instructor:		Persily, Nathaniel A.				
LAW	7001	ADMINISTRATIVE LAW	4.00	4.00	P	
Instructor:		O'Connell, Anne Margaret Joseph				
LAW	7108	STATE CONSTITUTIONAL LAW	3.00	3.00	P	
Instructor:		Schacter, Jane				

LAW TERM UNTS: 10.00 LAW CUM UNTS: 90.00

2021-2022 Winter

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	881	EXTERNSHIP COMPANION SEMINAR	2.00	2.00	MP	
Instructor:		Winn, Michael				
LAW	882	EXTERNSHIP, CIVIL LAW	6.00	6.00	MP	
Instructor:		Winn, Michael				
LAW	2402	EVIDENCE	5.00	5.00	P	
Instructor:		Fisher, George				

LAW TERM UNTS: 13.00 LAW CUM UNTS: 103.00

2021-2022 Spring

Course		Title	Attempted	Earned	Grade	Eqiv
LAW	2403	FEDERAL COURTS	4.00	4.00	P	
Instructor:		Fisher, Jeffrey				
LAW	7084	THE FIRST AMENDMENT: FREEDOM OF SPEECH AND PRESS	3.00	3.00	P	
Instructor:		Persily, Nathaniel A.				
LAW	7821	NEGOTIATION	3.00	3.00	MP	
Instructor:		Thacker, Aaron B				

LAW TERM UNTS: 10.00 LAW CUM UNTS: 113.00

END OF TRANSCRIPT

Juliet Brodie
Professor of Law
Director of the Stanford Community Law Clinic
559 Nathan Abbott Way
Stanford, California 94305-8610
650-724-2507
jmbrodie@law.stanford.edu

June 21, 2023

The Honorable P. Casey Pitts
Robert F. Peckham Federal Building & United States Courthouse
280 South 1st Street, Room 2112
San Jose, CA 95113

Dear Judge Pitts:

I write with enthusiasm to recommend Jacob McCall, who graduated from SLS in June 2022, as a clerk in your chambers. I directly supervised Jacob in his clinical work at Stanford's Community Law Clinic (CLC), and thus have a strong basis on which to evaluate his work as a lawyer. Based on that experience, I am confident that you would be extremely satisfied with his work and, in fact, that you would enjoy immensely the opportunity to work with him. As a clinic student, Jacob had a caseload of individual client legal services matters. He was diligent, compassionate, and brought a growth mindset to the work. He has strong analytic and writing skills, and a long-standing commitment to public service. I can't imagine better qualities in a clerk.

As you may know, clinics at SLS operate on a full-time basis; students enroll for a "clinic quarter," during which they take no other classes and engage as a full-time professional in this clinic work. Each CLC student carries a case load of several cases simultaneously representing low-income people in three practice areas: housing, social security disability, and criminal record expungement matters. The clinic is fundamentally a trial clinic. Students take the lead in the full range of work associated with a legal services docket: fact investigation, legal research, interviewing, counseling, negotiating, and written and oral advocacy in state court and in administrative tribunals. They must quickly master the applicable legal scheme for each subject, while also forming productive and collaborative attorney-client relationships. Clinic work also requires participation in weekly seminars and case rounds, and a significant amount of reflective writing. In short, CLC is a legal workplace, where law students demonstrate how they will transition from student to professional. Jacob performed very strongly in each domain.

Due to the pandemic, Jacob's quarter was an online quarter. Rather than sit cheek by jowl in our neighborhood-based legal services office, Jacob and his peers had to represent clients and build a professional community in the digital world. Jacob proved himself adaptable and present even under these difficult circumstances, and was an important part of the cohesion of the group.

I supervised Jacob personally on an eviction matter that arose in the context of then-new COVID-19 tenant protection measures, both state and federal. Jacob and a peer were tasked to assist a tenant who had fallen behind in rent due to the pandemic in asserting her rights against eviction if she applied for available and specific government rental assistance. Because the legal regime was new, and the landlord under it no better than the tenant, the matter required the ability to translate law into lay terms and to counsel the tenant under circumstances of profound uncertainty and anxiety. It also required, of course, comprehension of the new law. Jacob led his team on this matter, and I relied on him to steer this ship through some rocky waters. I was continually impressed by his mastery of the situation and, more, his ability to endure the kind of indeterminacy that can make many novice professionals very shaky.

Jacob also represented a client seeking Supplemental Security Income and another petitioning the state court for post-conviction relief. My colleagues who supervised him on these matters similarly report strong written and analytic work, and the ability to stay on task and be productive in the remote environment. His SSI client received a fully favorable decision, and he was similarly able to get excellent results for his expungement client, the early termination of probation, and expungement of the conviction.

In addition to his casework, Jacob was a strong contributor to our classroom sessions. He cared about his own clients and those of his colleagues. He was engaged and collaborative. In short, I recommend Jacob McCall very highly as a clerk. He is a very strong student with a deep commitment to public service. I know that clerking in a district court would equip him well for his career, and predict that you would enjoy working with him very much. Please do not hesitate to call upon me if I can provide any additional information.

Sincerely,

/s/ Juliet Brodie

Jacob McCall

1392 Danville Blvd., Apt. 101, Alamo, CA 94507 • mccalljv@gmail.com • (704) 698-5468

WRITING SAMPLE

The attached writing sample is an ethics complaint I prepared at the 65 Project. The assignment was to build the case against attorneys who file frivolous lawsuits to cast doubt on our electoral system. I independently researched, wrote, and edited the entire piece. I received permission from my supervisor to use this writing sample.

December 8, 2022

Office of the Bar Counsel
99 High Street
2nd Floor
Boston, Massachusetts 02110

Dear Office of the Bar Counsel:

The 65 Project is a bipartisan, nonprofit effort to protect democracy from abuse of the legal system by holding accountable lawyers who engage in fraudulent and malicious efforts to overturn legitimate elections and undermine American democracy.

We write to request that the Office of the Bar Counsel investigate the actions taken by Alan M. Dershowitz relating to his effort to dismantle the fundamental right to vote. Mr. Dershowitz served as part of a coordinated attempt to abuse the judicial system to promote and amplify bogus, unsupported claims of fraud to discredit elections and voting procedures.

Mr. Dershowitz worked on one matter, in the state of Arizona: *Lake v. Hobbs*. This lawsuit lacked any basis in law or fact. Indeed, this lawsuit was created by politicians and attorneys to create a false narrative about election security and the health of American democracy solely based on conjecture and conspiracy theories. The actions in *Lake v. Hobbs* were so troubling that Mr. Dershowitz and his co-counsels have already been subjected to Rule 11 sanctions for their conduct in this case.

A full investigation by the Office of the Bar Counsel will demonstrate the egregious nature of Mr. Dershowitz's actions, especially when considered in light of his purposes, the direct and possible consequences of his behavior, and the serious risk that Mr. Dershowitz will repeat such conduct unless disciplined.

BACKGROUND

Joe Biden received over 1.6 million votes in Arizona in the 2020 Presidential Election, defeating Mr. Trump by approximately 11,000 votes.[1] Mr. Trump's head of the U.S. Cybersecurity and Infrastructure Security Agency, Christopher Krebs, announced that the "November 3rd election was the most secure in American history. . . . There is no evidence that any voting system deleted

[1] *See* Federal Election Commission, *Official 2020 Presidential General Election Results*, available at https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf.

or lost votes or changed votes or was in any way compromised." Even the Arizona GOP-backed audit of the 2020 Arizona election came to a similar conclusion.[2]

Nonetheless, Kari Lake, the Republican candidate for Governor of Arizona, continued to promote baseless conspiracies about the 2020 election and cast doubt about the 2022 midterm elections.[3] In fact, Kari Lake has continually said she would not concede if she lost, and as of this filing she has still not conceded her electoral defeat to Governor-elect Katie Hobbs.[4]

To raise the specter of voting irregularities and election security ahead of the 2022 midterm elections, Kari Lake filed *Lake v. Hobbs* to undermine faith in the Arizonian electoral system and lay the groundwork for challenging results that Kari Lake disagrees with. After her loss in the midterms, Kari Lake did just that, and filed a lawsuit alleging unsubstantiated voting irregularities and fraud.[5]

Mr. Dershowitz filed a fraudulent, conspiracy-ridden, lawsuit that has been the cornerstone of undermining the democratic process in Arizona. He should be thoroughly investigated for his conduct.

CONDUCT GIVING RISE TO THE COMPLAINT

Mr. Dershowitz helped lead the charge on behalf of Ms. Lake in Arizona.

On April 22, 2022, Mr. Dershowitz initiated *Lake v. Hobbs* in the United States District Court for the District of Arizona. The complaint Mr. Dershowitz filed in this case relies solely on unfounded conspiracy theories, easily proven false, with no basis in law or fact.

For example, in *Lake v. Hobbs*, which is full of baseless claims, the Plaintiffs stated:

> The official result totals do not match the equivalent totals from the Final Voted File (VM55). These discrepancies are significant with a total ballot delta of 11,592 between the official canvass and the VM55 file when considering both the counted and uncounted ballots … a large number of files on the Election Management System (EMS) Server and HiPro Scanner machines were deleted including ballot images, election related databases, result files, and log files. These files would have aided in our

[2] Bob Christie and Christina Cassidy, *GOP Review Finds No Proof Arizona Election Stolen from Trump*, AP (Sept. 24, 2021), https://apnews.com/article/donald-trump-elections-arizona-phoenix-conspiracy-theories-d38321441bcd6cea58421f6871b4f74e.
[3] Maeve Reston, *Kari Lake Raises Unfounded Doubts About Election Results in Arizona Governor Race That's Too Early to Call*, CNN (Nov. 9, 2022), https://www.cnn.com/2022/11/09/politics/kari-lake-arizona-governor-race/index.html.
[4] Summer Concepcion, *Kari Lake Refuses to Say Whether She Would Accept Loss in Arizona Election*, NBCNEWS (Oct. 16, 2022), https://www.nbcnews.com/politics/2022-election/kari-lake-refuses-say-whether-accept-loss-arizona-election-rcna52475.
[5] *Kari Lake Campaign Files Lawsuit Seeking Arizona Election Day Records*, DEMOCRACY DOCKET (Nov. 28, 2022), https://www.democracydocket.com/news-alerts/kari-lake-campaign-files-lawsuit-seeking-arizona-election-day-records/.

> review and analysis of the election systems as part of the audit. The deletion of these files significantly slowed down much of the analysis of these machines. Neither of the 'auditors' retained by Maricopa County identified this finding in their reports.[6]

However, this is a far cry from the truth. There was, in fact, no substantial difference between the official results and the audit results. As Judge John J. Tuchi of the United States District Court for the District of Arizona cited in his order granting the Defendant's motion to dismiss, "[t]here were no substantial differences between the hand count of the ballots provided and the official election canvass results for Maricopa County. This is an important finding because the paper ballots are the best evidence of voter intent and there is no reliable evidence that the paper ballots were altered to any material degree."[7]

Further, no election files or ballot images were deleted in Arizona following the 2020 election. As the Defendants noted in their motion for sanctions, "all the hard drives and corresponding data files from the November 2020 General Election were maintained and safely secured by Maricopa County; the files the Cyber Ninjas claimed were missing were either not subpoenaed and so not provided, or were not located because of the Cyber Ninjas' ineptitude."[8] The Plaintiffs, instead of acknowledging the audit undermined their argument of fraud and impropriety, cherrypicked statements to promote lies about the security of Arizona elections.

But these are not the only lies Mr. Dershowitz used to promote baseless conspiracy theories. To argue that Arizona had a huge risk of election tampering and manipulation, Mr. Dershowitz argued that "[a]ll electronic voting machines can be connected to the internet or cellular networks, directly or indirectly, at various steps in the voting, counting, tabulating, and/or reporting process."[9] This is patently false. As the Defendants noted, "Maricopa County's vote tabulation system is not, never has been, and cannot be connected to the Internet. The Arizona Senate's Special Master confirmed that Maricopa County uses an air-gapped system that 'provides the necessary isolation from the public Internet, and in fact is in a self-contained environment" with "no wired or wireless connections in or out of the Ballot Tabulation Center' so that 'the election network and election devices cannot connect to the public Internet.'"[10]

Mr. Dershowitz also promoted lies about basic Arizona election procedures, that should have been resolved had Mr. Dershowitz conducted a reasonable inquiry into his own client's allegations. First, as part of the Plaintiff's request for relief, Mr. Dershowitz argued for a paper ballot voting system.[11] Second, Mr. Dershowitz claimed that Arizona does not have its election equipment subjected to independent experts.[12] Finally, Mr. Dershowitz claimed that Arizona does not subject its elections to post-election vote-verifying audits.[13]

---

[6] *Lake v. Hobbs*, Case No. 2:22-cv-00677-JJT (D. Ariz.) May 4, 2022, First Amended Compl. at 13-14.
[7] *Lake v. Hobbs*, Case No. 2:22-cv-00677-JJT (D. Ariz.) Aug. 26, 2022, Order Granting Motion to Dismiss at 4 n.2.
[8] *Lake v. Hobbs*, Case No. 2:22-cv-00677-JJT (D. Ariz.) Aug. 10, 2022, Motion for Sanctions at 3.
[9] *Lake v. Hobbs*, Case No. 2:22-cv-00677-JJT (D. Ariz.) May 4, 2022, First Amended Compl. at 6.
[10] *Lake v. Hobbs*, Case No. 2:22-cv-00677-JJT (D. Ariz.) Aug. 10, 2022, Motion for Sanctions at 5.
[11] *Lake v. Hobbs*, Case No. 2:22-cv-00677-JJT (D. Ariz.) May 4, 2022, First Amended Compl. at 38.
[12] *Id.* at 11.
[13] *Id.* at 14.

All three of these factual allegations are blatantly false. Arizona currently, and has always, used a paper ballot system, independent experts do test election technologies, including tests conducted by the independent Election Assistance Commission, and Arizona performs its legally mandated audits consistently.[14]

Judge Tuchi, instead of finding widespread election security issues, discovered that Arizona had actually created an incredibly secure voting system. He noted that "[d]efendants have taken numerous steps to ensure such security failures do not exist or occur in Arizona or Maricopa County. As the Court chronicled in painstaking detail in Section I.B, every vote cast can be tied to a paper ballot (see A.R.S. §§ 16-442.01; § 16-446(B)(7); 2019 EPM at 80), voting devices are not connected to the Internet (see Doc. 29, Ex. 6) any ports are blocked with tamper evident seals (see Tr. 177:5-20), and access to voting equipment is limited (see Tr. at 179:15-20)."[15]

As with so many of these lies, the veracity of these claims could easily have been debunked with publicly available information, and with a reasonable inquiry from Mr. Dershowitz. Instead, he decided to promote these falsehoods, and file his complaint anyway.

These complaints were not only factually deficient, but they were legally deficient as well. Mr. Dershowitz was unable to meet the burden of proving any of the factors necessary for an injunction. As Judge Tuchi stated, "[t]o obtain a preliminary injunction, a plaintiff must show that '(1) [it] is likely to succeed on the merits, (2) [it] is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in [its] favor, and (4) an injunction is in the public interest.' *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Plaintiffs cannot meet any of the factors."[16]

Furthermore, Mr. Dershowitz's claims were clearly barred by the Eleventh Amendment. Mr. Dershowitz argued that his claims qualified for the *Ex Parte Young* exception the Eleventh Amendment, but the court noted that the exception only applies to "claims seeking prospective injunctive relief against state officials to remedy a state's ongoing violation of federal law" but that "Plaintiffs do not plausibly allege a violation of federal law."[17]

Not only was the central claim in *Lake v. Hobbs* legally dubious, but the lawsuit was so legally deficient that it lacked basic requirements to be heard in court. In fact, the court held that "even upon drawing all reasonable inferences in Plaintiffs' favor, the Court finds that their claimed injuries are indeed too speculative to establish an injury in fact, and therefore standing."[18] Moreover, the court found that any future harm could only come to pass after "a long chain of hypothetical contingencies" occurred.[19]

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[14] *Lake v. Hobbs*, Case No. 2:22-cv-00677-JJT (D. Ariz.) Aug. 10, 2022, Motion for Sanctions at 2-3.
[15] *Lake v. Hobbs*, Case No. 2:22-cv-00677-JJT (D. Ariz.) Aug. 26, 2022, Order Granting Motion to Dismiss at 15 n.13.
[16] *Id.* at 2 n.1.
[17] *Id.* at 12, 16.
[18] *Id.* at 14.
[19] *Id.*

And these factual and legal allegations led to Rule 11 and 28 U.S.C. § 1927 sanctions. This is because "any objectively reasonable investigation of this case would have led to publicly available and widely circulated information contradicting Plaintiffs' allegations and undercutting their claims. Thus, Plaintiffs either failed to conduct the reasonable factual and legal inquiry required under Rule 11, or they conducted such an inquiry and filed this lawsuit anyway."[20] The court then held that "Plaintiffs made false, misleading, and unsupported factual assertions in their FAC and MPI and that their claims for relief did not have an adequate factual or legal basis grounded in a reasonable pre-filing inquiry."[21]

Including these types of allegations to support any lawsuit would be problematic. More troubling, though, is that Mr. Dershowitz sought to undermine a basic tenet of our democracy, the right to vote, to achieve political ends for his client.

But the goal was never a complete victory in the courts. Mr. Dershowitz's main objective was to use the courts to delay, to confuse, and to harm our electoral process. This became evident to Judge Tuchi, who stated that "Plaintiffs waited nearly two weeks after the hearing to ask to submit another declaration, in what appears to be an effort to get the last word and cast doubt on Mr. Jarrett's testimony at a point when the County could no longer respond. The Court will not allow such potential gamesmanship."[22] This was not a good faith effort to make sure the right person won.

Mr. Dershowitz knew he had neither the law nor the facts on his side, and yet he filed this lawsuit anyway. He did this to undermine faith in our electoral system.

Mr. Dershowitz's actions warrant discipline.

A SUBSTANTIAL BASIS EXISTS FOR THE DISCIPLINARY COMMISSION TO INVESTIGATE MR. DERSHOWITZ'S CONDUCT AND TO IMPOSE APPROPRIATE DISCIPLINE

The Office of the Bar Counsel should investigate Mr. Dershowitz's actions on the following basis:

1. Mr. Dershowitz Violated Rule 3.1 By Bringing and Defending a Matter He Knew Lacked Merit

Rule 3.1 provides, in part, as follows: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."

[20] *Lake v. Hobbs*, Case No. 2:22-cv-00677-JJT (D. Ariz.) Dec. 1, 2022, Order on Motion for Sanctions at 25.
[21] *Id.* at 28-29.
[22] *Lake v. Hobbs*, Case No. 2:22-cv-00677-JJT (D. Ariz.) Aug. 26, 2022, Order Granting Motion to Dismiss at 21 n. 17.

Comment 2 states that: "The action is frivolous…if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law."

"Knowledge" under the Rules of Professional Conduct can be "inferred from circumstances."[23]

Ample evidence demonstrates that Mr. Dershowitz knew of the frivolous nature of the litigation he initiated. In *Lake v. Hobbs* the complaint was based on debunked conspiracy theories. Many of these theories had been proven false before he filed complaints. No reasonable person would consider the cited "evidence" a sufficient basis for casting doubt on elections in Arizona.

In fact, the pleadings themselves make clear that when filing the claims, Mr. Dershowitz did not have a proper basis for bringing them because the Plaintiffs themselves could not support the allegations they promoted. Mr. Dershowitz claimed that Arizona did not use paper ballots, and yet Kari Lake, his client, votes using a paper ballot.

In imposing sanctions, Judge Tuchi acknowledged the importance of election security, but that "the Court will not condone litigants ignoring the steps that Arizona has already taken toward this end and furthering false narratives that baselessly undermine public trust at a time of increasing disinformation about, and distrust in, the democratic process. It is to send a message to those who might file similarly baseless suits in the future."

Mr. Dershowitz knew the claims he was advancing in *Lake v. Hobbs* lacked any basis in law or fact.

In short, for the many reasons provided above, Mr. Dershowitz's conduct violated Rule 3.1.

2. Mr. Dershowitz Violated Rule 4.4 Command That Lawyers Respect the Rights of Third Parties

Pursuant to Rule 4.4, "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person."

Comment 1 to the Rule states, "Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons."

In the interests of his clients, Mr. Dershowitz sought to harm democracy in Arizona and directly diminish the right to vote of millions of Arizonians. Judge Tuchi highlighted the extraordinary remedy they sought and the effect it would have on millions of Americans, stating that "Plaintiffs requested in this case would have called for a massive, perhaps unprecedented federal judicial intervention to overhaul Arizona's elections procedures shortly before the election. Plaintiffs bore a substantial burden to demonstrate that such an intervention was constitutionally required

[23] Rule 1.0(f).

and in the public interest. Yet they never had a factual basis or legal theory that came anywhere close to meeting that burden."

Mr. Dershowitz disregarded the potential consequences of his proposed remedy – showing no respect for the rights of millions of third persons – and his actions warrant discipline.

3. Mr. Dershowitz Engaged in Misconduct that Violates Rule 8.4

Under Rule 8.4, "It is professional misconduct for a lawyer to…violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; [or] engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or] engage in conduct that is prejudicial to the administration of justice."

Mr. Dershowitz participated in a purposefully dishonest effort to undermine the 2022 election. He brought frivolous claims that the Constitution, prior court decisions, and relevant statutes barred. The bare "factual" bases he relied on were supported by false statements and wild speculation from discredited sources.

Mr. Dershowitz misrepresented the availability of expert evidence to support the Complaint's allegations. He knew that expert testimony did not exist and yet purported to rely on them anyway.

It all amounted to a dishonest attempt to undermine the public confidence in the 2022 election. It is easy – indeed, necessary – to also recognize the direct link between the use of the courts to sow these seeds of doubt and confusion and the events of January 6, 2021, when people believing that the 2020 was stolen stormed the Capitol in a violent insurrection. Judge Tuchi recognized this, finding that "[a]s the court warned in *King v. Whitmer*, unfounded claims about election-related misconduct 'spread the narrative that our election processes are rigged and our democratic institutions cannot be trusted. Notably, many people have latched on to this narrative, citing as proof counsel's submissions in this case.' *King*, 556 F. Supp. 3d at 732. The Court shares this concern."

His actions must be scrutinized and disciplined.

***

The United States Supreme Court has long recognized in upholding disciplinary actions that "speech by an attorney is subject to greater regulation than speech by others."[24] As officers of the court an attorney is "an intimate and trusted and essential part of the machinery of justice" and a "crucial source of information and opinion."[25] Although attorneys, of course, maintain First Amendment rights, the actions in question here cross far beyond protected speech. Indeed, disciplinary boards and courts considering the similar conduct of other lawyers involved in the effort to overturn the 2020 election have rejected assertions that the attorneys enjoyed First Amendment protections for their conduct.

[24] *Ohralik v. Ohio State Bar Assn*., 436 U.S. 447, 465 (1978).
[25] *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1056, 1072 (1991).

That members of our esteemed profession would engage in such actions – conduct that contributed to substantial harm to American democracy – should cause considerable distress within the entire legal community.

> False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of free society. When those false statements are made by an attorney, it also erodes the public's confidence in the integrity of attorneys admitted to our bar and damages the profession's role as a crucial source of reliable information.[26]

Mr. Dershowitz chose to offer his professional license to an assault on our democracy. He pursued litigation that lacked any basis in law or fact. He participated in an organized effort to sow discord and doubt about the 2022 elections.

For the reasons set forth above, we respectfully request that the Office of the Bar Counsel investigate Mr. Dershowitz's conduct and pursue appropriate discipline.

Sincerely,

Managing Director
michael@the65project.com

On behalf of The 65 Project

[26] *In the Matter of Rudolph W. Giuliani*, Supreme Court of the State of New York Appellate Division, First Judicial Dept., May 3, 2021 at 30-31.

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WRITING SAMPLE

The attached writing sample is a memorandum I prepared as a legal intern at Just Atonement, Inc. The assignment was to detail potential fundamental rights arguments we could raise in California state court as they pertain to climate change litigation. I independently researched, wrote, and edited the entire piece. I received permission from my supervisor to use this writing sample.

NEW FUNDAMENTAL RIGHTS

California courts have largely mirrored federal courts in their substantive due process and fundamental rights analysis. When deciding whether or not a right is truly fundamental, California courts decide if a right is "implicit in the concept of ordered liberty" and is a part of the "basic civil rights of man." *Carmel-by-the-Sea v. Young*, 2 Cal. 3d 259, 266 (1970) (finding privacy to be a fundamental right) (quoting both *Palko v. Connecticut*, 302 U.S. 319, 325 (1937) and *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)). California courts also analyze if the right is "so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Coshow v. City of Escondido*, 132 Cal. App. 4th 687, 709 (2005) (quoting *United States v. Salerno*, 481 U.S. 739, 750-51 (1987)).

Violations of fundamental rights typically trigger strict scrutiny, which require that the law is narrowly tailored to serve a compelling state interest. *Coshow*, 132 Cal. App. 4th at 708. However, when deciding on new fundamental rights California courts try to use judicial restraint and "exercise the utmost care whenever we are asked to break new ground in this field. *Id.* (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993).

For our case in particular, we may want to argue that such rights are "fundamental to our very existence and survival," *Conservatorship of Valerie N.*, 40 Cal. 3d 143, 161 (1985), and essential to other fundamental rights guaranteed by the Constitution. *White v. Davis*, 13 Cal. 3d 757, 775 (1975) (finding that privacy is fundamental because it is necessary to use and protect rights in the Bill of Rights).

California Courts sometimes use equal protection to protect certain fundamental rights. *Otsuka v. Hite*, 64 Cal. 2d 596, 601 (1966). In *Otsuka*, the court held that voting was a fundamental right preservative of all other rights, and "once the franchise has been granted to the

electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Id.* (quoting *Harper v. Virginia State Bd of Elections*, 383 U.S. 663, 665 (1966). This also follows Supreme Court precedent by seeing if a certain right or interest is unevenly granted amongst similarly situated groups. *Compare M.L.B. v. S.L.J.*, 519 U.S. 102, 120 (1996) (holding that access to courts cannot depend upon the ability to pay court costs because "[t]he equal protection concern relates to the legitimacy of fencing out would-be applicants based solely on their inability to pay") *with Manduley v. Superior Court*, 27 Cal. 4th 537, 568 (2002) ("To succeed on their claim under the equal protection clause, petitioners first must show that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner.")

Another thing to pay attention to is the general opposition to using the due process clause to create an affirmative duty on the government by the courts. *Zelig v. County of Los Angeles*, 27 Cal. 4th 1112, 1148-49 (2002). There are two general exceptions to this idea, the "Special Relationship" Exception and the "Danger Creation" Exception. *Id.* The first exception is of no help to us because it generally only applies when the state has someone in their custody. If the court adopts an opposition to creating an affirmative duty in our case, then, we must rely on the second exception. The "Danger Creation" exception only applies when the state had previously done something that put the individual in danger, and inaction is not enough. *Id.* In this circumstance, the court may be willing to impose an affirmative obligation on the state to mitigate the risk. *Id.*

This might not be a problem for us, depending on what facts we plead. If there is particular legislative or government conduct that created a danger with climate change, then the court will probably not concern itself with this principle. If we are more general, however, and

not really discussing how exactly the government caused the danger, we may have trouble with this. Also, and this really depends on what the court does, but technically the right to life and property, as discussed below, exists outside of the due process clause. We will probably still be using substantive due process arguments, but theoretically if the court just uses article 1 § 1 we may be in the clear. That would also explain, as discussed below, why the right to privacy can be used against private actors. The right to privacy, also in article 1 § 1, can be argued against private conduct without arguing state action.

For our case, equal protection may actually be less helpful when arguing for a fundamental right because the doctrine typically relates to a right being provided by the state, such as voting, and then it being unequally applied to the people. Equal protection may still prove useful for suspect classifications, but may be less situated for our fundamental rights litigation. Substantive due process, on the other hand, may provide us with more avenues for success.

A. Right to Life

Californian's have certain inalienable rights, one of which is the right to "enjoy[] and defend[] life." Cal. Const. art. 1, § 1. While a fundamental right to life, especially regarding climate change, has not truly been litigated, there are some important cases that deal with the right to life in California.

The fundamental right to life has technically been recognized by the courts in some fashion for decades. *In re Marilyn H.*, 5 Cal. 4th 295, 306 (1993) ("Substantive due process prohibits government interference with a person's fundamental right to life . . . by unreasonable or arbitrary legislation"). However, the scope of this right is largely unknown, especially because much of the litigation around this right revolves around children and wardship cases. *See, e.g.*, *In*

re David B., 91 Cal. App. 3d 184, 192 (1979); *In re Bridget R.*, 41 Cal. App. 4th 1483, 1503 (1996).

Fortunately for us, some cases do discuss the fundamental right to life and its general protection from government encroachment. *In re Marriage Cases,* for example, discusses the importance of certain fundamental rights, including the right to life, and how these rights must be protected by being outside the grasp of the legislature. *In re Marriage Cases*, 43 Cal. 4th 757, 852 (2008) (The "right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other *fundamental* rights may not be submitted to a vote) (emphasis added). The courts, necessarily, must be the preservers of such fundamental rights.

Further, from an originalist perspective, the California Supreme Court has recognized the fundamental nature of article 1 § 1 and utilized language that correlates to the substantive due process doctrine finding certain rights to be fundamental, and therefore worthy of protection. In *Billings v. Hall*, the court noted that this part of the California constitution "is as old as the Magna Charta. It lies at the foundation of every constitutional government, and is necessary to the existence of civil liberty and free institutions. It was not lightly incorporated . . . conveying no substantial meaning or idea; but as one of those fundamental principles of enlightened government, without a rigorous observance of which there could be neither liberty nor safety to the citizen." *Billings v. Hall*, 7 Cal. 1, 6 (1857). Courts will only recognize fundamental rights that are "implicit in the concept of ordered liberty," *Carmel-by-the-Sea*, 2 Cal. at 266, and "so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Coshow*, 132 Cal. App. 4th at 709. Broadly speaking, courts look to history, tradition, and culture. This interpretation of the right to life by the court in *Billings*, does have an originalist flavor that may prove sufficient in showing how fundamental the right to life is.

International law may provide some persuasive authority on the right to life in California. Not only does article 6 § 1 of the International Covenant on Civil and Political Rights ("ICCPR") guarantee a right to life, but ¶ 62 of General Comment 36 to the ICCPR, which came out in 2018, states that "environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life." It goes further to say that "[i]mplementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ensure sustainable use of natural resources, [and] develop and implement substantive environmental standards."

Furthermore, some international case law helps flesh out the developing international conceptualization on the right to life. *Öneryildiz v. Turkey*, a case before the European Court of Human Rights, laid the groundwork for the right to life in climate change litigation against government actors by holding Turkey responsible for a methane explosion. *Öneryildiz v. Turkey*, 48939/99, Eur. Ct. H.R. ¶ 110 (2004). The court, there, found Turkey responsible because they were aware of the consequences and failed to act in order to avert the risks. *Id.* at ¶ 93. In addition, the European Court of Human Rights later expanded this principle to include natural disasters, rather than just human-caused disasters. *Budayeva and Others v. Russia*, 15339/02, Eur. Ct. H.R. ¶ 160 (2008) (holding that the government could be responsible for a mudslide because they were aware of the risks and did nothing to abate such risks). Outside of Europe, the African Commission on Human and Peoples' Rights also found that the government violated its peoples' right to life because of the extensive environmental degradation and pollution. *See*

SERAC and CESR v. Nigeria, No. 155/96, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 67 (October 27, 2001), http://caselaw.ihrda.org/doc/155.96/view/en/#merits.

Recently, the Supreme Court of the Netherlands found that the government had failed to fulfill its positive obligation to protect the right to life of its people, and ordered it to take more aggressive action when dealing with climate policy and reduce its emissions drastically. *The State of the Netherlands v. Urgenda Foundation* (2019) (Neth.), https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2006.

It is also worth mentioning that the fundamental right to life has been argued before in front of the California Supreme Court. *In re Anderson*, 69 Cal. 2d 613, 630 (1968). Defendants were arguing that there is a fundamental right to life and so the court must apply strict scrutiny when analyzing state policy that impacts the right to life. *Id.* There, the defendant was trying to argue that the death penalty was not narrowly tailored because life imprisonment was a better fit. *Id*. The court, however, ignored this reasoning entirely and did not decide this claim on the merits, and instead punted the death penalty debate to the legislature. *Id.* at 632. This does not foreclose the opportunity to argue for a fundamental right to life in this case. Even the ICCPR can have an exception for capital punishment and yet believe that the government needs to act to protect the right to life when dealing with environmental calamity. Also there have been a lot of cases since *In re Anderson* that develop the fundamental right to life in new ways, and do say that such fundamental rights are best left to the courts and *not* the legislature. *In re Marriage Cases*, 43 Cal. 4th at 852.

As a side note, it may be possible to argue a deprivation of the fundamental right to life against a corporation, or any private actor. There is no government action provision in article 1 §

1 of the California constitution, and other rights in § 1, such as privacy, can be used against private actors. *Hill v. National Collegiate Athletic Assn.*, 7 Cal. 4th 1, 20 (1994). Although this holding was narrowly construed to only apply to the right to privacy, especially because the court looked at the proposition history, case law does not foreclose the possibility that other rights could also be litigated against private actors. *Id.* at 17, 20.

Overall, the right to life may be our best fundamental rights argument. There appears to be some arguments about its importance and relation to tradition and history. While the right has not been litigated too much in California, it does have strength abroad which could be persuasive to the right judge. It also feels intuitive, and "common-sense," as a right which makes it easier to understand and agree with.

B. Right to a Healthy Environment

Unlike the right to life, the California constitution makes no mention of a right to a healthy environment. However, in article 1 § 7 of the California constitution, which covers the due process clause, it does mention that the legislature and voters who adopted Proposition 7 of 1974 both believe that this amendment was necessary to serve public interests, such as protecting the environment. Cal. Const. art. 1, § 7. Technically this piece of legislative and referendum history would apply to any fundamental right dealing with the environment, as we would be applying the due process clause, but it is especially fitting here.

Federal courts have routinely rejected the fundamental right to a healthy environment. *Pinkney v. Ohio Environmental Protection Agency*, 375 F. Supp. 305, 310 (N.D. Ohio 1974); *SF Chptr. of A. Philip Randolph Inst. v. United States EPA*, 2008 U.S. Dist. LEXIS 27794 *19; *Del. Riverkeeper Network v. FERC*, 895 F.3d 102, 108 (D.C. Cir. 2018).

One court recently held that people did have a right to a healthy environment. *Juliana v. United States*, 217 F. Supp. 3d 1224, 1250 (D. Ore. 2016). On appeal, the 9th Circuit poured cold water on this holding, however, by holding that such relief would have to go through the political branches. *Juliana v. United States*, 947 F.3d 1159, 1165 (9th Cir. 2020). The court did not technically overrule this part of the original *Juliana* decision, by saying "even assuming such a broad constitutional right exists . . . we conclude that such relief . . . must be presented to the political branches of government." *Id.* at 1164-65. Fundamental rights do not typically go through the political branches, as the whole point is to protect these rights from politics, so this has the effect of seriously undermining the District Court's holding.

Some state courts, on the other hand, are much more open to the idea of a fundamental right to a healthy environment, but the legal context in those cases is much different from our own. In *Montana Envtl. Info. Ctr. v. Department of Envtl. Quality*, the Montana Supreme Court held that Montanans have a right to a "clean and healthful environment." *Montana Envtl. Info. Ctr. v. Department of Envtl. Quality*, 296 Mont. 207, 225 (1999). Further, in *In re Maui Elec. Co.* the Supreme Court of Hawai'i found that Hawaiians also have a fundamental "right to a clean and healthful environment." *In re Maui Elec. Co.*, 141 Haw. 249, 261 (2017). However in both of these cases, the court ruled this way because they found these rights explicitly in the state constitution. *Montana Envtl. Info. Ctr.*, 296 Mont. at 225; *In re Maui Elec. Co.*, 141 Haw. at 261. Neither court had to find an implicit right through substantive due process, they just interpreted the law that was already codified in the constitution.

Once again, international law may be able to assist us in some way. The Colombian Supreme Court found that there was a fundamental right to a healthy environment through other rights, such as the right to life and right to health. *Future Generations v. Ministry of the*

Environment and Others, C.S.J. 13 (2018). Further, the African Commission on Human and Peoples' Rights found that the government violated its peoples' right to a healthy environment by degrading the environment and damaging the health of its people. *SERAC and CESR v. Nigeria* at ¶ 52.

This may be a trickier right to argue simply because of the lack of case law. Much of the case law that does exist is also counter to our goal. There are some decent arguments, especially arguments related to the right's implicit nature in our history and how necessary it is for other rights, and international cases point in our favor as well, but this is probably less fruitful than the right to life.

C. Right to Bodily Integrity, Right to Self, Right to Dignitary Privacy

This is the most amorphous fundamental right argument, mainly because it combines different privacy interests into one grab-bag fundamental right.

The Supreme Court has held that "[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others." *Union P.R. Co. v. Botsford*, 141 U.S. 250, 251 (1891). The 9th Circuit, among other circuits, has mostly construed this doctrine when adjudicating cases related to public school teacher abuse. *See, e.g.*, *Plumeau v. School Dist. # 40*, 130 F.3d 432, 438 (9th Cir. 1997).

However, there is little reason to believe this doctrine is limited to public schools. In fact, litigation on the Flint Water Crisis is utilizing this exact doctrine and applying it to environmental catastrophes. *Guertin v. Michigan*, 912 F.3d 907, 932 (6th Cir. 2019) (finding that certain public figures violated the plaintiffs' "substantive due process right to bodily integrity"

because of their role in creating the crisis, their knowledge of the problem, and their avoidance of responsibility).

California courts have embraced this concept in part. In *Am. Acad. of Pediatrics v. Lungren*, the California Supreme Court struck down an abortion law requiring parental consent for an abortion because "the decision [to have an abortion] . . . has such a substantial effect . . . over her personal bodily integrity," and the court found little benefits for the legislation. *Am. Acad. of Pediatrics v. Lungren*, 16 Cal. 4th 307, 337 (1997). However, California courts have also shown the limits of such a fundamental right. *Coshow*, 132 Cal. App. 4th at 709. There, the court established that there is a fundamental right to bodily integrity, but limited that right when dealing with public health and fluoride-filled water. *Id.* This can be distinguishable from our case, however. As the court did in *Guertin*, *Coshow* may not apply here because we are dealing with a situation where the government approved of policies that directly undermined the health of its people. *Guertin*, 912 F.3d at 922 (finding that *Coshow* was inapplicable because that case dealt with the state's police powers to improve public health, and intentionally adding lead was the exact opposite of exercising police powers for the public health).

Some international law cases have used article 8 of the European Convention on Human Rights, the right to respect for private and family life, as a means of tackling climate change issues. Plaintiffs in *Urgenda* successfully argued that their article 8 rights were violated because the state failed to mitigate climate change. *Urgenda* at 5.6.2. Furthermore, the European Court of Human Rights has also litigated this positive state obligation extensively. *Fadeyeva v. Russia*, 527233/00, Eur. Ct. H.R. ¶ 134 (2005) (finding that the state violated article 8 because they failed to mitigate the extreme levels of pollution which caused the deterioration of plaintiff's health); *Ledyayeva, Dobrokhotova, Zolotareva, and Romashina v. Russia*, 53157/99, Eur. Ct.

H.R. ¶ 88 (2006) (reaffirming *Fadeyeva* and finding violation of article 8 because of steel plant pollutants and the negative impact on plaintiffs' health); *Dubetska and Others v. Ukraine*, 30499/03, Eur. Ct. H.R. ¶ 156 (2011) (reaffirming previous cases and the positive obligation on the state to mitigate environmental damage when it impacts people's lives).

This may not be the most applicable right, based upon current precedent, but there does appear to be a growing movement around using this right to fight against government action or government inaction. This may not be the best right to use, but cases dealing with Flint have shown that such a tactic is not unheard of or unreasonable.

D. Right to the Enjoyment of Property

There is no doubt that climate change will negatively impact the ability of people to use and enjoy their property. This right essentially would be used to argue that government action has undermined people's ability to use their property, most likely due to rising sea levels, although other environmental factors could be important as well.

The California Constitution protects both the right to "acquire[], possess[], and protect[] property," as well as the right to not be deprived of property without due process. Cal. Const. art. 1, § 1, 7. Some case law also supports the idea that such a right is fundamental and integral to other rights. *Santa Monica Beach v. Superior Court*, 19 Cal. 4th 952, 1006 (1999) ("[o]ne's right to life, liberty, and property . . . and other *fundamental* rights may not be submitted to a vote") (emphasis added). It does appear that this right may be limited, and largely dependent on the factual situation of the plaintiffs before the court. In *San Marcos Mobilehome Park Owners Ass'n v. City of San Marcos*, the court refused to liken a denial of rent increases to a denial of the fundamental right to property because it distinguished between the property right affecting the life situation of the individual and the property right affecting the economic situation of the

individual. *San Marcos Mobilehome Park Owners Ass'n v. City of San Marcos*, 192 Cal. App. 3d. 1492, 1502 (1987). This actually may help our case because we are dealing with an environmental calamity that negatively impacts the life of the individual through their property right. A home near water being submerged affects more than the economic situation of the homeowner.

This claim could be successful in court, but there really is not too much litigation on this particular topic. The right to property does seem to be fundamental in certain situations, situations that could be applicable to us, but there is just so little here.

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Date of JD/LLB	**May 12, 2023**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Berkeley Journal of International Law** **California Law Review**
Moot Court Experience	**No**

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References

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 19, 2023

The Honorable P. Casey Pitts
United States District Court
Northern District of California

Dear Judge Pitts,

I am an incoming associate at Skadden and a recent graduate of the University of California, Berkeley, School of Law. I write to apply for a clerkship in your chambers.

Growing up with a stutter, I never thought becoming an attorney would be possible. However, by reciting poetry, volunteering to speak during class activities, and leading student organizations, I overcame my disability. Taking the challenging journey to find my voice motivated me to advocate for communities without one. As a college organizer with Habitat for Humanity, I convinced East Bay cities to build more affordable housing and stood up for working families in Oakland whose children needed tutoring and childcare. After graduating, I helped Santa Clara County's public health agency expand access to opioid overdose medication.

These experiences inspired me to return to Berkeley for law school, where thought-provoking classes and jobs molded me into a more effective advocate. Drafting firearm regulations for Colma and Union City and guiding an Iraqi refugee through immigration applications showed me how to break down complex information into simple language. Defending federal officers' conduct in a mass tragedy taught me how to take perspectives different from my own. Advancing the language rights of Social Security beneficiaries demonstrated to me the power of listening in writing successful arguments. And designing a more accessible law review website revealed to me how teamwork and a little perseverance often make the seemingly impossible a reality.

As your law clerk, I would be humbled to combine these skills with my passion for public service to thoughtfully research key issues, consider all viewpoints, and help your chambers advance justice. San Jose is also my home, and I hope to better serve the South Bay with the legal analysis and writing skills gained from a judicial clerkship.

Thank you for considering my application.

Sincerely,

Hiep Nguyen

HIEP NGUYEN

3525 Sierra Road | San Jose, CA 95132 | (408) 455-8716 | hiepn@berkeley.edu

EDUCATION

University of California, Berkeley, School of Law, Juris Doctor, May 2023
Activities: *California Law Review*, Senior Technology Editor
Berkeley Journal of International Law, Senior Online Editor
Asian and Pacific American Law Students Association, Dale Minami Chair
Honors: Teressa K. Lippert Distinguished Service Award, *California Law Review*, Recipient
International Law Certificate, Recipient
Pro Bono Honors, Recipient
Publications: Livable Cities for All, CALIF. L. REV. ONLINE (forthcoming, 2023).
Be Not Afraid, CALIF. L. REV. ONLINE (Apr. 2022).

University of California, Berkeley, Bachelor of Arts, Integrative Biology, August 2018
Honors: Marian Diamond Award for Research and Teaching, Recipient
Department Commencement, Speaker

EXPERIENCE

California Law Review Berkeley, CA
Senior Technology Editor August 2021–June 2023
Served on a fifteen-person Executive Committee that directed journal policy and led a team of over 180 editors. Redesigned the *CLR* website and print edition cover, shifted the journal to Google Drive, and introduced new USB-C monitors. Developed the *CLR Podcast* into its own publication. Modernized the journal's transition process, graphic design, social media, and communications. Rebuilt *CLR*'s community.

University of California, Berkeley, School of Law Berkeley, CA
Researcher November 2022–June 2023
Worked with Professor Kristen Holmquist to examine how exclusionary zoning has exacerbated wealth inequality, road fatalities, poor community health, and urban bankruptcy. Proposed reforms that included missing middle density homes, safer and more efficient road designs, and expanded transportation options.

Skadden, Arps, Slate, Meagher & Flom LLP Palo Alto, CA and Washington, DC
Summer Associate May 2022–July 2022
Researched standards for equitable estoppel, futility, and third-party beneficiary exception in multidistrict litigation involving airbag defects. Analyzed civil procedure rules. Recommended that an energy company pursue a waiver of untimely objections to discovery requests. Investigated a nonprofit's investment in defaulted student loans. Evaluated whether in-videogame consumable items constituted gambling. Examined sexual harassment legislation. Assessed mistrial rules in trade secret litigation.

Giffords Law Center to Prevent Gun Violence and Brady Legal San Francisco, CA
Director, Berkeley Law Gun Violence Prevention Project September 2020–June 2022
Developed safe storage, closed-circuit videotaping, and trigger lock legislation. Maintained gun law databases. Co-managed twenty students. Coordinated meetings and assignments with supervising attorneys.

U.S. Department of Justice, Federal Tort Claims Act (FTCA) Section Washington, DC
Law Clerk June 2021–August 2021
Drafted recommendations on malicious prosecution, fraudulent conspiracy theory, and wrongful imprisonment claims. Wrote stipulations and organized dozens of cases implicating federal agents in a mass shooting incident. Researched the FTCA's statute of limitations, equitable tolling principles, and standards of review.

INTERESTS

Cycling, graphic design, scrapbooking, Southeast Asian cooking, *Star Trek*, and swimming.

Berkeley Law
University of California
Office of the Registrar

Hiep Nguyen
Student ID: 25282313
Admit Term: 2020 Fall

Academic Program History
Major: Law (JD)

Awards

International Law Certificate

2020 Fall

Course		Description	Units	Law Units	Grade
LAW	200F	Civil Procedure Andrew Bradt	5.0	5.0	H
LAW	201	Torts Richard Davis	4.0	4.0	P
LAW	202.1A	Legal Research and Writing Michelle Cole	3.0	3.0	CR
LAW	202F	Contracts Manisha Padi	4.0	4.0	P

	Units	Law Units
Term Totals	16.0	16.0
Cumulative Totals	16.0	16.0

2021 Spring

Course		Description	Units	Law Units	Grade
LAW	202.1B	Written and Oral Advocacy **Units Count Toward Experiential Requirement** Michelle Cole	2.0	2.0	P
LAW	220.6	Constitutional Law **Fulfills Constitutional Law Requirement** Erwin Chemerinsky	4.0	4.0	H
LAW	230	Criminal Law Saira Mohamed	4.0	4.0	H
LAW	261	International Law Katerina Linos	4.0	4.0	H

	Units	Law Units
Term Totals	14.0	14.0
Cumulative Totals	30.0	30.0

2021 Fall

Course		Description	Units	Law Units	Grade
LAW	222	Federal Courts Erwin Chemerinsky	4.0	4.0	H
LAW	241	Evidence Andrea Roth	4.0	4.0	P
LAW	266.5	Poverty Law and Policy Abbye Atkinson	3.0	3.0	HH
LAW	270.72	Pathways to Carbon Neutrality Fan Dai Daniel Farber Robert Infelise	2.0	2.0	H
LAW	295.1G	Calif Law Review Saira Mohamed	1.0	1.0	CR

	Units	Law Units
Term Totals	14.0	14.0
Cumulative Totals	44.0	44.0

2022 Spring

Course		Description	Units	Law Units	Grade
LAW	220.9	First Amendment Sarah Song	3.0	3.0	HH
LAW	223	Administrative Law Kenneth Bamberger	4.0	4.0	HH
LAW	223.1	Election Law **Fulfills 1 of 2 Writing Requirements** Abhay Aneja	3.0	3.0	H
LAW	244.1	Adv Civ Pro:Complex Civil Lit Andrew Bradt	3.0	3.0	H
LAW	295.1G	Calif Law Review Amanda Tyler	1.0	1.0	CR

	Units	Law Units
Term Totals	14.0	14.0
Cumulative Totals	58.0	58.0

Carol Rachwald, Registrar

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Berkeley Law
University of California
Office of the Registrar

Hiep Nguyen
Student ID: 25282313
Admit Term: 2020 Fall

Printed: 2023-06-08 15:35

2022 Fall

Course		Description	Units	Law Units	Grade
LAW	231	Crim Procedure-Investigations Erwin Chemerinsky	4.0	4.0	H
LAW	250	Business Associations Frank Partnoy	4.0	4.0	P
LAW	252.2	Antitrust Law Prasad Krishnamurthy	4.0	4.0	P
LAW	270.6	Energy Law & Policy Sharon Jacobs	3.0	3.0	P
LAW	299	Indiv Res Project **Fulfills 1 of 2 Writing Requirements** Kristen Holmquist	2.0	2.0	HH

	Units	Law Units
Term Totals	17.0	17.0
Cumulative Totals	75.0	75.0

2023 Spring

Course		Description	Units	Law Units	Grade
LAW	208I	Intl & Foreign Legal Research **Units Count Toward Experiential Requirement** Marci Hoffman	3.0	3.0	HH
LAW	210	Legal Profession **Fulfills Professional Responsibility Requirement** Andrew Dilworth	2.0	2.0	P
LAW	226.1T	Local Govrnment Law **Fulfills 1 of 2 Writing Requirements** Eric Casher	3.0	3.0	P
LAW	243.51	Designing Government Services **Units Count Toward Experiential Requirement** Nicole Zeichner	1.0	1.0	CR
LAW	263	Int'L Human Rights Saira Mohamed	3.0	3.0	P
LAW	271.71	International Environ Law Neil Popovic	2.0	2.0	H

	Units	Law Units
Term Totals	14.0	14.0
Cumulative Totals	89.0	89.0

Carol Rachwald, Registrar

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University of California
Berkeley Law
270 Simon Hall
Berkeley, CA 94720-7220
510-642-2278

KEY TO GRADES

1. Grades for Academic Years 1970 to present:

HH	–	High Honors	CR	–	Credit
H	–	Honors	NP	–	Not Pass
P	–	Pass	I	–	Incomplete
PC	–	Pass Conditional or Substandard Pass (1997-98 to present)	IP	–	In Progress
NC	–	No Credit	NR	–	No Record

2. Grading Curves for J.D. and Jurisprudence and Social Policy PH.D. students:

In each first-year section, the top 40% of students are awarded honors grades as follows: 10% of the class members are awarded High Honors (HH) grades and 30% are awarded Honors (H) grades. The remaining class members are given the grades Pass (P), Pass Conditional or Substandard Pass (PC) or No Credit (NC) in any proportion. In first-year small sections, grades are given on the same basis with the exception that one more or one less honors grade may be given.

In each second- and third-year course, either (1) the top 40% to 45% of the students are awarded Honors (H) grades, of which a number equal to 10% to 15% of the class are awarded High Honors (HH) grades or (2) the top 40% of the class members, plus or minus two students, are awarded Honors (H) grades, of which a number equal to 10% of the class, plus or minus two students, are awarded High Honors (HH) grades. The remaining class members are given the grades of P, PC or NC, in any proportion. In seminars of 24 or fewer students where there is one 30 page (or more) required paper, an instructor may, if student performance warrants, award 4-7 more HH or H grades, depending on the size of the seminar, than would be permitted under the above rules.

3. Grading Curves for LL.M. and J.S.D. students for 2011-12 to present:

For classes and seminars with 11 or more LL.M. and J.S.D. students, a mandatory curve applies to the LL.M. and J.S.D. students, where the grades awarded are 20% HH and 30% H with the remaining students receiving P, PC, or NC grades. In classes and seminars with 10 or fewer LL.M. and J.S.D. students, the above curve is recommended.

Berkeley Law does not compute grade point averages (GPAs) for our transcripts.

For employers, more information on our grading system is provided at: https://www.law.berkeley.edu/careers/for-employers/grading-policy/

Transcript questions should be referred to the Registrar.

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June 14, 2023

The Honorable P. Casey Pitts
Robert F. Peckham Federal Building & United States Courthouse
280 South 1st Street, Room 2112
San Jose, CA 95113

Dear Judge Pitts:

I am writing to highly recommend Mr. Hiep Nguyen for a judicial clerkship. Mr. Nguyen was a student in two of my classes: Constitutional Law and Federal Courts. He received an Honors grade in both classes, as he has in most of his classes at Berkeley Law. His exams were excellent, reflecting thorough preparation, deep knowledge of the material, and strong analytical skills.

Mr. Nguyen is an editor of two law reviews: California Law Review and the Berkeley Journal of International Law. I have read his published law review note on the Ukraine and human rights and thought it was very impressive in its content and its writing. These experiences will serve him well as a law clerk. They demonstrate his hard work, his ability to handle multiple tasks effectively, and his strong writing and editing skills.

I always have found him to be a very kind and warm person. I know that you would very much enjoy working with him and that he would be a very positive presence in your chambers. I have no doubt that he would do an excellent job as your law clerk.

Sincerely,

Erwin Chemerinsky

June 6, 2023

The Honorable P. Casey Pitts
Robert F. Peckham Federal Building & United States Courthouse
280 South 1st Street, Room 2112
San Jose, CA 95113

Re: Clerkship Candidate Hiep Nguyen

Dear Judge Pitts:

I write to enthusiastically recommend Hiep Nguyen for a clerkship in your chambers. Hiep was a student in my First Amendment Law course in spring 2022. He was one of the 5 strongest students in the class and received a grade of HH. His outstanding analytical and writing skills, his capacity for hard work, and his experience working closely with others as part of a team all suggest he would be a successful law clerk.

Out of the 61 students in my course, Hiep stood out for his contributions in class and his performance on the final exam. He consistently made incisive contributions to class discussions. I use a panel method to foster participation, notifying students a week in advance when they will be on call. Hiep was always well-prepared and gave concise, thoughtful answers to the questions I posed in class. While he did not talk as much as the most vocal students in the class, I clearly remember Hiep raising his hand several times when I asked for volunteers. During one particularly engaging discussion on hate speech in the context of high schools and universities, I asked students to offer arguments for and against restrictions on hate speech. Hiep raised a particularly incisive example from his own high school to demonstrate the unintended consequences of speech restrictions and identify potential tensions between principled and pragmatic considerations in debates about hate speech regulations.

Since I have not worked closely with Hiep on any research, I cannot comment on his research skills, but I can speak to his intellectual abilities and writing skills as reflected on his final exam. Hiep's final exam was among the 5 best in the class. He demonstrated deep understanding of First Amendment doctrine and developed clear, well-substantiated arguments in support of his conclusions. In all his answers, Hiep not only correctly identified and applied the relevant legal standards; he also masterfully synthesized the relevant cases, making subtle distinctions among the cases while building a compelling line of argument. I was impressed by his ability to analyze complex facts and legal doctrines and effectively articulate persuasive legal arguments.

Hiep's successes extend beyond the classroom. He has deepened his research and writing skills as a Law Clerk for the U.S. Department of Justice, Federal Tort Claims Act (FTCA) Section, where he drafted memoranda for the FTCA Director's review involving an alleged malicious prosecution claim and wrote stipulations and organized claims implicating FBI agents in a high-profile mass shooting incident. As Senior Technology Editor of the *California Law Review*, he has overseen final editing and publication of all print and online articles and managed and edited the journal's podcasts, among other responsibilities. He also serves on CLR's 15-member Executive Committee, which makes decisions on journal policy. He has deepened his editing skills as Senior Online Editor of the *Berkeley Journal of International Law*. Hiep has also acquired valuable research and writing experience as a Researcher for the Center for Law, Energy, and the Environment (CLEE) at Berkeley Law and the Giffords Law Center to Prevent Gun Violence and Brady Legal for which he developed firearm regulation proposals and presented them to elected municipal officials.

Through his work experience and participation in law journals and other activities, Hiep has had many opportunities to develop personal qualities that will serve him well as a judicial clerk. He has honed his ability to take initiative and direction, work well under pressure, and be a team player who cooperates closely with others. I came to appreciate Hiep's personal qualities even more after learning about his personal and family circumstances. His father, a refugee who came to the U.S. in the wake of the Vietnam War, has had a powerful influence on Hiep as a model of resilience in the face of adversity. Hiep drew on this resilience as he overcame a childhood stutter through hard work and persistence. These experiences have instilled in Hiep a deep empathy and passion for advocating on behalf of communities that have historically lacked power and voice.

Here is one final anecdote to give you a better sense of Hiep. A few weeks into the semester, I ran into Hiep on the street near Berkeley Law School. We had met for class earlier that day and Hiep had been on call. I had confidently pronounced his name "Heep." When I ran into him later, we talked about how his semester was going and at the end of our conversation, I asked him if I had pronounced his name correctly in class. He smiled warmly and said, "It's actually pronounced Hee-ehp. Thank you for asking." We both smiled, me a bit sheepishly. I thanked him and we talked a bit more about the class and then we both went on our way. Reflecting back on this, I realize I couldn't have been the first person to mispronounce Hiep's name and am struck by the patience, warmth, and good humor he displayed in that encounter.

For all these reasons, I believe Hiep would make an outstanding judicial clerk. With his energy, dedication, and qualities of mind, he would rise to the challenge of your clerkship and be a productive presence in your chambers. If you have any questions or would like to hear more about Hiep, I would be happy to speak with you by phone (510-230-7814) or email (ssong@law.berkeley.edu).

Sincerely,

Sarah Song

sarah song - ssong@law.berkeley.edu

The Milo Rees Robbins Chair of Legal Ethics Professor of Law
Professor of Philosophy and Political Science
University of California, Berkeley
School of Law

sarah song - ssong@law.berkeley.edu

CALIFORNIA LAW REVIEW

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To Whom It May Concern,

We have had the pleasure of working closely with Hiep for the past two years and are proud to recommend him for a judicial clerkship.

Fatima Ladha, Editor-in-Chief, Volume 111:

One of Hiep Nguyen's greatest strengths is his ability to work collaboratively within a team. As the Editor-in-Chief for the California Law Review, having Hiep as the Senior Technology Editor over the past year has ensured that we lead legal publications nationally with regard to technological features. Over the past year, Hiep replaced all the hardware in the California Law Review office with updated technology, working with the school and the journal's leadership to secure funding and technical support in making the change. Furthermore, he streamlined and updated our website to facilitate our audience's legal research and citations. He also developed our podcast, and, now, California Law Review is one of the only top law reviews in the country with a podcast, if not the only one. More than his accomplishments, Hiep is a hard worker. He recognizes his value as a team member by always completing his tasks in a timely and efficient manner. He is communicative, generous with his expertise, and thoughtful about navigating his academic demands with his responsibilities towards the journal. Hiep is always willing to go the extra mile to support their colleagues. He actively listens to others, values diverse opinions, and readily offers assistance when others need it.

Moreover, Hiep possesses exceptional planning and organizational skills. He is meticulous in his approach to tasks and consistently deliver high-quality work. Our Technological advancements over the past year under Hiep's leadership has set California Law Review up for success for many years to come. Hiep is able to accomplish so much because he consistently produces thorough and well-structured plans that not only meet objectives but also account for potential challenges and risks. He recognizes the limitations of his plans and adapts accordingly when needed. For example, Hiep planned all his changes to the journal's technology during the academic year, and, when roles transitioned and the new volume's leadership team took over, he made sure to fold in the incoming Senior Technology Editor and adequately train her so that she could take over his plans, setting the California Law Review for future success.

I have witnessed Hiep's outstanding performance firsthand over the last year. His thoughtfulness and attention to detail, combined with his strategic thinking and team-oriented mindset, have consistently contributed to successful outcomes at the journal. Hiep will be a pleasure to work with and I enthusiastically recommend him for Your Honor's chambers.

Chloe Pan, Editor-in-Chief, Volume 112:

Hiep is remarkable for his unwavering dedication to teamwork and meticulousness. Furthermore, he demonstrates a willingness to tackle tasks that may not always receive immediate recognition, but ultimately yield substantial long-term benefits for the journal. For example, he replaced decades-old

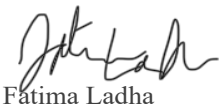
computers in our physical office with grand new monitors. This upgrade revitalized our office, creating a more functional and collaborative environment for our 170+ journal members. Hiep also took the initiative to formalize our journal's podcast into its own fully-fledged production, modernized our journal's transition process, and played a pivotal role in mentoring and supporting associate editors. For his efforts, he was widely nominated by his peers to receive the CLR Distinguished Service Award.

Maro Vidal-Manou, Administrator:

I am the California Law Review administrator and worked closely with Hiep on several tasks during his tenure with our journal. I found him to be a very strong communicator and one who took initiative He has designed and built the law review's new website that has been met with great reviews. He also organized several events for the members with success and designed a new cover for the journal that will be implemented starting on the June 2023 issue.

Hiep will certainly be missed because he was consistently a pleasure to work with and always performed his work with joy.

Thank you for considering our letter. Hiep will make an outstanding judicial clerk, and we give him our strongest recommendation.



Fatima Ladha
Editor-in-Chief, Volume 111, *California Law Review*
fatimaladha@berkeley.edu

Chloe Pan
Editor-in-Chief, Volume 112, *California Law Review*
chloepan@berkeley.edu

Maro Vidal-Manou
Administrator, *California Law Review*
mvmanou@berkeley.edu

U.S. Department of Justice

Civil Division

RSP:TNA:HNguyen:hn
391-33-83625

The following writing sample is a memorandum I wrote as a law clerk at the United States Department of Justice's Federal Tort Claims Act Section during the summer of 2021. The facts of this claim have been changed to anonymize the people involved.

July 27, 2021

MEMORANDUM FOR JAMES G. TOUHEY, JR.
DIRECTOR, FEDERAL TORT CLAIMS ACT SECTION

Re: Administrative Tort Claim of John Doe

TIME LIMIT:	At your earliest convenience
NATURE OF CLAIM:	Fraud, false arrest, malicious prosecution, defamation, libel, slander, false imprisonment, wrongful custody and seizure of private property, and constitutional torts
AMOUNT OF CLAIM:	$5 million

RECOMMENDATION

Based on the information contained in this record, I recommend that Mr. John Doe's claim for $5 million against the United States be denied. Mr. Doe's claim deals exclusively with non-federal officers, is untimely under the statute of limitations of the Federal Tort Claims Act (FTCA) and relies on the thoroughly discredited Redemption Theory. Moreover, under the FTCA, sovereign immunity is not waived as to Mr. Doe's accusations of fraud, false arrest, malicious prosecution, defamation, libel, slander, false imprisonment, wrongful custody and seizure of private property, and constitutional torts.

FACTS

A. Administrative Claim Background

1. Submission of Claim

Mr. Doe submitted an administrative claim dated January 13, 2021, requesting $5 million in compensation for damage and injury to his body, likeness, and name during his incarceration in Wisconsin state prisons.[1] He deems the three aforementioned items to be his commercial property.[2] The Department of Justice (Department) received his claim on January 25, 2021, and confirmed receipt on February 20, 2021.[3] Mr. Doe alleges that these injuries have occurred continuously since February 21, 2007.[4] He sent additional documents to support his claim on April 12, 2021.[5] The Department received these documents on April 26, 2021, and confirmed receipt on May 19, 2021.[6]

2. Nature of Claims

Mr. Doe alleges that his body, likeness, and name are his privately secured property and were fraudulently taken from him and falsely imprisoned by the following three officers of the State of Wisconsin (Wisconsin): former Governor Scott Walker, former Attorney General Lisa Schultz, and former Kenosha County, Wisconsin, State Attorney (KCSA) Anita Reed.[7] He also claims that Governor Tony Evers, Attorney General Lloyd Voss, and KCSA Kimberly M. Thomasen bear responsibility for the purported wrongs committed by their predecessors.[8] Moreover, Mr. Doe alleges damage to his body, likeness, and name through malicious prosecution involving coercion, force, and duress as well as subsequent incarceration in poor conditions.[9] He claims libel, slander, and defamation through unlawful dissemination of his private property, including his name and likeness, without his permission.[10] Lastly, Mr. Doe states that his constitutional rights were violated during his arrest and detention.[11]

Mr. Doe submits two documents to support his contention that his body, likeness, and name are his private property. The first is a private security agreement with a purported effective date of February 8, 1984, notarization date of July 31, 2013, and signature date of February 13, 2020.[12] This agreement claims that Mr. Doe is the sole owner of his body, likeness, and name, and by extension, he has exclusive rights to all court documents and judgments

[1] Tab A, Standard Form 95 of John Doe dated Jan. 13, 2021 (Doe SF-95) § 12.
[2] Tab A, Doe SF-95 § 10.
[3] Tab B, Letter from Mary B. Casitas to John Doe dated Feb. 20, 2021 (Casitas Letter I).
[4] Tab A, Doe SF-95 § 8.
[5] Tab C, Letter from Mary B. Casitas to John Doe dated May 19, 2021 (Casitas Letter II).
[6] *Id*.
[7] Tab A, Doe SF-95 § 8, 10; Tab D, Memorandum from John Doe to Wisconsin (Doe Memo), at 2.
[8] Tab D, Doe Memo at 1, 4.
[9] Tab A, Doe SF-95 § 10; Tab E, Doe Aff. I at 1-2; Tab F, Notice to Principal, John Doe-Kenosha County, Apr. 12, 2021 (Doe Notice to Principal), at 1-2.
[10] Tab A, Doe SF-95 § 10; Tab D, Doe Memo at 6; Tab F, Doe Notice to Principal at 1-2.
[11] Tab E, Doe Aff. I at 2.
[12] Tab G, Private Security Agreement, John Doe, Feb. 18, 1984 (Doe Security Agreement), at 1, 16-17.

concerning him.[13] The private security agreement also contains a schedule dated February 8, 1984, that lists various forms of government identification to support his ownership claim.[14] The second is a copyright document, dated February 8, 1984, and signed on December 13, 2020, that details when and where his name may be used.[15]

Mr. Doe also offers a variety of other documents in support of his allegations that the government owes him money for the injuries that transpired during its use of his body, likeness, and name. These include the following:

- An undated commercial fraud complaint sent to the Federal Bureau of Investigation's Public Corruption Unit in Milwaukee, Wisconsin.
- A complaint against the KCSA's office dated July 26, 2013, and sent to the Attorney Registration and Disciplinary Commission of the Supreme Court of Wisconsin.
- An affidavit against Judge Patrick K. Adams of the Kenosha County Judicial Circuit Court dated July 26, 2013, and sent to the Wisconsin Judicial Inquiry Board.[16]
- An affidavit sent to former U.S. Attorney General Eric Holder on July 25, 2013, that attempted to initiate a False Claims Act investigation.[17]
- A constructive cease and desist notice, dated March 31, 2015, sent to Attorney General Schultz and Ms. Reed.[18]
- Presentment letters to Attorney General Schultz and Ms. Reed, dated and notarized on June 2, 2015, demanding proof of their claims against him and threatening Ms. Reed with default within 21 days if the letters were left unanswered.[19]
- Notarizations of a lack of response to the aforementioned presentment letters on July 17, 2015, and August 6, 2015.[20]
- A notice of default sent to both Attorney General Schultz and Ms. Reed, but addressed only to Ms. Reed, on August 1, 2015.[21]
- Two affidavits sent to Wisconsin and Governor Evers that allege the same torts listed in Mr. Doe's FTCA claim.[22]

[13] *Id.* at 1, 6, 10.
[14] *Id.* at 18.
[15] Tab H, Common Law Copyright Notice, John Doe, Feb. 8, 1984 (Doe Copyright Notice), at 1, 4.
[16] Tab E, Doe Aff. I at 1-2; Tab I, Commercial Fraud Complaint, John Doe-Federal Bureau of Investigation (Doe Commercial Fraud Complaint), at 1; Tab J, Complaint Against Kenosha County State Attorney's Office, John Doe-Supreme Court of Wisconsin (Doe Kenosha County Complaint), at 1.
[17] Tab K, Doe Aff. II at 1.
[18] Tab L, Cease and Desist Notice, John Doe-Kenosha County, Mar. 31, 2015 (Doe Cease and Desist Notice), at 1, 4, 6.
[19] Tab M, Presentment Letter, John Doe-Anita Reed, Jun. 2, 2015 (Doe-Reed Presentment Letter), at 1-2; Tab N, Presentment Letter, John Doe-Lisa Schultz, Jun. 2, 2015 (Doe-Schultz Presentment Letter), at 1-2; Tab O, Dix Aff. I; Tab P, Dix Aff. II.
[20] Tab Q, Dix Aff. III; Tab R, Dix Aff. IV; Tab S, Dix Aff. V; Tab T, Dix Aff. VI
[21] Tab U, Default Notice, John Doe-Anita Reed, Aug. 1, 2015 (Doe Default Notice), at 1.
[22] Tab D, Doe Memo at 1; Tab V, Doe Aff. III at 1.

3. Previous Claims

First, in a complaint sent to the Supreme Court of Wisconsin on July 26, 2013, and an affidavit sent to Attorney General Holder on July 25, 2013, Mr. Doe notes that Wisconsin owed him a $7 million security interest originally due on February 27, 2007, for the value of his body, likeness, and name.[23] He updated the claim to $100 million in 2009 and filed a lien for this amount against Wisconsin in a document notarized on July 31, 2013.[24] In a notice sent to Wisconsin on December 8, 2020, and in affidavits sent to Attorney General Holder and Governor Evers, Mr. Doe repeatedly argues that Wisconsin has never satisfied his lien request and continues to benefit unfairly from usage of his property.[25]

Second, on August 1, 2015, when Ms. Reed did not respond to his presentment letter demanding proof of her claims against him, Mr. Doe claimed that Ms. Reed owed him a $125,000 penalty plus 25% annual interest compounded daily.[26]

Third, in the notice that Mr. Doe sent to Wisconsin on December 8, 2020, he claimed $16 million for the same torts listed in his FTCA claim.[27] He offered to settle for $5 million in return for Wisconsin's recognition of his ownership over his body, likeness, and name.[28] On April 12, 2021, Mr. Doe revised this claim against Wisconsin to a $15 million sum certain.[29] He offered to settle for 25% of his sum certain ($3.75 million) in return for Wisconsin's recognition of his ownership claim.[30]

B. Court and Criminal Records

1. Sex Offenses

Mr. Doe is a registered sex offender with a history of sexual assaults and sexual abuse.[31] This record began on May 29, 2004, when Mr. Doe was arrested for aggressive criminal sexual abuse and criminal sexual assault in Wisconsin.[32] Charges were filed against him in a Wisconsin court on July 26, 2004.[33] That court found him guilty of both crimes and sentenced him on May 5, 2005.[34] Mr. Doe was credited for time already served.[35]

In addition, on March 20, 2007, a case was filed against Mr. Doe in Wisconsin for aggressive criminal sexual abuse, aggressive criminal sexual abuse against a victim less than one

[23] Tab J, Doe Kenosha County Complaint at 2; Tab K, Doe Aff. II at 2.
[24] *Id*.; Tab G, Doe Security Agreement at 20.
[25] Tab K, Doe Aff. II at 2; *see* Tab D, Doe Memo at 4; Tab V, Doe Aff. III at 2.
[26] Tab U, Doe Default Notice at 2.
[27] Tab D, Doe Memo at 8.
[28] *Id*.
[29] Tab F, Doe Notice to Principal at 5.
[30] *Id*.
[31] Tab W, Wisconsin Registered Sex Offender Report for John Doe dated Mar. 29, 2021 (Sex Offender Report), at 1-2.
[32] Tab X, Wisconsin Court Report for John Doe dated Jul. 26, 2004 (Court Report I), at 1-2.
[33] Tab Y, Wisconsin Court Report for John Doe dated Jul. 26, 2004 (Court Report II).
[34] Tab X, Court Report I at 1-2; Tab Y, Court Report II.
[35] *Id*.

year of age, criminal sexual assault, and predatory criminal sexual abuse.[36] On February 4, 2008, a Wisconsin court found him guilty of all crimes and fined him $510 per crime.[37] The court sentenced him but also credited him for time already served.[38]

Moreover, on or about October 5, 2012, Mr. Doe performed another aggravated sexual assault of a victim under 13 years of age in Kenosha County. Even though he was required to register as a sex offender after this act, Mr. Doe was arrested in Kenosha County on May 4, 2013, for failing to do so.[39] A case was filed against him on May 24, 2013, and on November 1, 2013, a Wisconsin court found him guilty of not registering as a sex offender.[40] Mr. Doe was admitted to a state prison in Deerville, Wisconsin, for this charge on April 29, 2014.[41]

2. Other Violent Crimes

A court in Wisconsin also found Mr. Doe guilty of an aggressive battery against a fireman on August 24, 2000.[42] He was given the maximum sentence of two years, which he served at a state prison in Green Bay, Wisconsin, starting September 25, 2000.[43]

LIABILITY

Under the FTCA, the federal government may be held liable for:

> money damages . . . for injury or loss of property . . . caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.[44]

A. Non-federal officers

The FTCA only covers claims against federal employees.[45] Governor Evers, Governor Walker, Attorney General Schultz, Attorney General Voss, KCSA Thomasen, and Ms. Reed are all officers or employees of Wisconsin and are not employed by the federal government.[46] Therefore, Mr. Doe's FTCA claims are not cognizable.

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[36] Tab Z, Wisconsin Court Report for John Doe dated Mar. 20, 2007 (Court Report III), at 1-2.
[37] *Id.*
[38] *Id.*
[39] Tab W, Sex Offender Report at 1-2.
[40] Tab AA, Wisconsin Court Report for John Doe dated May 24, 2013 (Court Report IV), at 1-2.
[41] Tab AB, Wisconsin Department of Corrections Report for John Doe dated Apr. 29, 2014 (Corrections Report I).
[42] Tab AC, Wisconsin Court Report for John Doe dated Aug. 24, 2000 (Court Report V).
[43] Tab AD, Wisconsin Department of Corrections Report for John Doe dated Sep. 25, 2000 (Corrections Report II).
[44] 28 U.S.C. § 1346(b)(1).
[45] 28 U.S.C. § 2671 ("[an] 'employee of the government' includes (1) officers or employees of any federal agency . . . (2) any officer or employee of a Federal public defender organization").
[46] Tab D, Doe Memo at 1.

B. Statute of Limitations

Under the FTCA, a claim accrues within two years.[47] The statute of limitations begins once Mr. Doe "becomes subjectively aware of the government's involvement in the injury" or when he "acquires information that would prompt a reasonable person to inquire further into a potential government-related cause of the injury, whichever happens first."[48]

Here, the claimant alleges the injuries first took place on February 21, 2007.[49] Mr. Doe was aware of the central aspects of his claim, including false arrest, malicious prosecution, imprisonment in poor conditions, wrongful incarceration, and wrongful custody of property from at least July 25, 2013, the earliest date where he sent a document alleging these tort claims.[50] Mr. Doe was clearly aware of these facts for over seven years before he filed his current claims on January 13, 2021. Therefore, the FTCA's statute of limitations bars his claim.

C. FTCA Exceptions

Even if federal employees were involved and the claims were timely, there is no liability. Mr. Doe's claims of injury and damage to his private property are all barred by exceptions to the FTCA's waiver of sovereign immunity.[51] These include his actual or implied claims of fraud, false arrest, malicious prosecution, defamation, libel, slander, false imprisonment, wrongful custody and seizure of private property, and constitutional torts that arise out of Attorney General Schultz and Ms. Reed carrying out their prosecutorial duties.

1. Fraud Claims

With regards to Mr. Doe's claim for fraudulent custody of his body, likeness, and name, the FTCA's sovereign immunity waiver does not apply to any fraud claims arising out of misrepresentation or deceit.[52] This includes Mr. Doe's allegations that prosecutors concealed facts, embezzled public funds, evaded taxes, forged papers, made misleading statements, and misused his name and property.[53] Individuals guilty of misrepresentation and deceit commit fraud because they willfully mislead others to unlawfully obtain and abuse others' property.[54]

Therefore, Mr. Doe's claim based on fraud fails under the FTCA.

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[47] 29 U.S.C. § 2401(b).
[48] *E.Y. ex rel. Wallace v. United States*, 758 F.3d 861, 866 (7th Cir. 2014).
[49] Tab A, Doe SF-95 § 8.
[50] Tab K, Doe Aff. II at 1-2, 4.
[51] *Millbrook v. United States*, 569 U.S. 50, 54 (2013); *FDIC v. Meyer*, 510 U.S. 471, 477 (1994); *Neustadt v. United States*, 366 U.S. 696, 711 (1961); *Nguyen v. United States*, 556 F.3d 1244, 1252 (11th Cir. 2009); *Bramwell v. U.S. Bureau of Prisons*, 348 F.3d 804, 806 (9th Cir. 2003); *Beneficial Consumer Disc. Co. v. Poltonowicz*, 47 F.3d 91, 96 (3d Cir. 1995); *Talbert v. United States*, 932 F.2d 1064, 1067 (4th Cir. 1991); *Bonilla v. United States*, 652 F. App'x 885, 890 (11th Cir. 2016).
[52] Tab A, Doe SF-95 § 8, 10; Tab D, Doe Memo at 2, 4; Tab J, Doe Kenosha County Complaint at 2; Tab K, Doe Aff. II at 3; *see Neustadt*, 366 U.S. at 711; *Poltonowicz*, 47 F.3d at 96.
[53] Tab I, Doe Commercial Fraud Complaint at 2; Tab L, Doe Cease and Desist Notice at 1, 4.
[54] *See United States v. Hoffman*, 901 F.3d 523, 538 (5th Cir. 2018) (citing *United States v. Morris*, 348 F. App'x 2, 3-4 (5th Cir. 2009)); *Clark v. Constellation Brands, Inc.*, 348 F. App'x 19, 21-22 (5th Cir. 2009).

2. False Arrest

Moreover, the federal government cannot be held liable for Mr. Doe's claims of false arrest.[55] Being Wisconsin state attorneys, Attorney General Schultz and Ms. Reed are also not law enforcement officials so they cannot be liable for false arrest claims.[56]

3. Malicious Prosecution

The FTCA excludes Mr. Doe's malicious prosecution claims.[57] This includes his accusations that Attorney General Schultz and Ms. Reed used aggressive collection procedures, coercion, duress, extortion, force, and intimidation to compel his court appearance.[58]

Moreover, the FTCA excludes Mr. Doe's implied malicious prosecution claims arising under the defamation, libel, and slander that he alleges Attorney General Schultz and Ms. Reed committed during their prosecution.[59] This includes claims that Attorney General Schultz and Ms. Reed unlawfully disseminated Mr. Doe's name through the Internet in their prosecution.[60]

Thus, Mr. Doe's claims fail on this count.

4. False Imprisonment and Custody of Goods

The FTCA excludes Mr. Doe's claims of false imprisonment, which include allegations of unlawful economic and physical servitude that resembles slavery.[61]

Moreover, even if the government treated Mr. Doe's body, likeness, and name as the private property of his trust, the FTCA still excludes suits for wrongful government custody of private property and unlawful seizure of assets.[62] Thus, this also invalidates Mr. Doe's claim.

5. Constitutional Torts

Mr. Doe alleges implied violations of his Fifth Amendment right to due process and Sixth Amendment right to self-representation.[63] The FTCA does not create an exception to sovereign immunity for constitutional matters, thus, his claim fails.[64]

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[55] 28 U.S.C. § 2680(h); *Nguyen*, 556 F.3d at 1252; Tab A, Doe SF-95 § 10.
[56] 28 U.S.C. § 2680(h); *Bonilla*, 652 F. App'x at 890
[57] 28 U.S.C. § 2680(h); *Millbrook*, 569 U.S. at 54.
[58] Tab A, Doe SF-95 § 10; Tab J, Doe Kenosha County Complaint at 3; Tab K, Doe Aff. II at 3-4.
[59] *Talbert*, 932 F.2d at 1067; Tab A, Doe SF-95 § 10; Tab D, Doe Memo at 6; Tab F, Doe Notice to Principal at 1-2; Paul F. Figley, *Understanding the Federal Tort Claims Act: A Different Metaphor*, 44:3/44:4 TORT TRIAL & PRAC. L. J. 1105, 1129 (2009) (citing 28 U.S.C. § 2680(h)).
[60] *Schneider v. United States*, 936 F.2d 956, 959 (7th Cir. 1991); Tab A, Doe SF-95 § 10; Tab F, Doe Notice to Principal at 3; Tab K, Doe Aff. II at 2.
[61] 28 U.S.C. § 2680(h); Tab A, Doe SF-95 § 10; Tab F, Doe Notice to Principal at 2.
[62] *Bramwell*, 348 F.3d at 806; Tab A, Doe SF-95 § 9-10; Tab G, Doe Security Agreement at 1, 6, 10; Tab H, Doe Copyright Notice at 1; Figley, *supra* note 59, at 1126 (citing 28 U.S.C. § 2680(c)).
[63] Tab A, Doe SF-95 § 8; Tab E, Doe Aff. I at 2.
[64] *FDIC*, 510 U.S. at 477; Figley, *supra* note 59, at 1110 (citing 28 U.S.C. § 1346(b)).

D. Redemption Theory

Mr. Doe's claim is founded upon the Redemption Theory, a duplicitous scheme where a person claims to be a Secured Party Creditor of themselves.[65] The theory has ties to the far-right Sovereign Citizen Movement.[66] Fringe groups believe that utilization of the gold standard is funded on the use of United States citizens as strawmen collateral to pay off its debts.[67]

This false theory's adherents believe that individuals may regain control over the strawman by cashing in government documents for the value of their person or filing Universal Commercial Code documents alleging that the government is illegally holding and misusing their physical body without compensation, as Mr. Doe does.[68] When the government ignores or refuses these requests, individuals may argue that the government owes them damages related to the fraudulent holding and misuse of their body.[69] In this case, Mr. Doe filed an administrative tort claim for commercial damages to his body during the course of imprisonment.[70] Courts have all held the Redemption Theory to be unsound, and some have even convicted individuals who utilize the Redemption Theory of criminal charges such as counterfeit creation of tax forms.[71] Mr. Doe's claims are, therefore, not legally sound and should be denied.

CONCLUSION

I recommend that Mr. John Doe's claim for $5 million be denied. His claim involves state officers to which the FTCA does not apply. The FTCA's statute of limitations also bars Mr. Doe's claim. Furthermore, his claim alleges fraud, false arrest, malicious prosecution, defamation, libel, slander, false imprisonment, wrongful seizure of property, and constitutional torts. All these alleged torts fall under exceptions to the FTCA's waiver of sovereign immunity. Last, Mr. Doe's claim is based on the thoroughly discredited Redemption Theory.

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[65] UNIV. N.C. SCH. OF GOV'T, A QUICK GUIDE TO SOVEREIGN CITIZENS, 2 (2013), https://www.sog.unc.edu/sites/www.sog.unc.edu/files/Sov%20citizens%20quick%20guide%20Nov%2013.pdf.
[66] ANTI-DEFAMATION LEAGUE, THE LAWLESS ONES: THE RESURGENCE OF THE SOVEREIGN CITIZEN MOVEMENT, 9 (2010), https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/lawless-ones-sovereign-citizen-movement-2010.pdf.
[67] UNIV. N.C. SCH. OF GOV'T, *supra* note 65.
[68] *Id.* at 3; Tab D, Doe Memo at 2; Tab E, Doe Aff. I at 1; Tab G, Doe Security Agreement at 20.
[69] UNIV. N.C. SCH. OF GOV'T, *infra* note 65, at 3.
[70] Tab A, Doe SF-95 § 10; Tab E, Doe Aff. I at 1-2; Tab G, Doe Security Agreement at 20.
[71] *See e.g.*, *United States v. Molesworth*, 197 F. App'x 694, 697 (9th Cir. 2006) (affirming conviction based on attempts to recoup money under Redemption Theory).

The following sample is a paper I wrote for my Election Law class. The research, writing, and analysis for this piece are completely my own.

The Entrenched Inequality of *Citizens United*

Hiep Nguyen

In 2014, San Jose's mayoral election cleanly split[1] the city's working-class Eastside from its affluent western half.[2] With around 3000 more votes, the Chamber of Commerce-allied candidate, Sam Liccardo, defeated a progressive county supervisor, Dave Cortese.[3] Liccardo was funded in part by the massive corporate spending[4] that has skyrocketed since *Citizens United v. Federal Election Commission*, which ended prohibitions on independent corporate spending in elections, and *SpeechNow.org v. Federal Election Commission*, which enabled outside groups (super PACs) to solicit unlimited donations from corporations and spend unlimited money as long as they do not "coordinate" with a candidate.[5] By giving corporations the same political speech rights as people, courts have allowed corporate interests to corrupt and distort elections. To remedy this and bring back corporate expenditure restrictions, the Court should recognize corporations as distinct entities due to their special privileges and apply the

[1] *Santa Clara County 2014 Election Results: Mayor of San Jose*, SANTA CLARA CNTY. REGISTRAR OF VOTERS (Dec. 15, 2014), https://results.enr.clarityelections.com/CA/Santa_Clara/54209/149818/Web01/en/summary.html.
[2] *See Underserved East San Jose Students Get a New Athletic Field*, CBS BAY AREA (Jun. 2, 2012), https://www.cbsnews.com/sanfrancisco/news/underserved-east-san-jose-students-get-a-new-athletic-field/; Eric Fischer, Map of Racial Distribution in San Jose, 2010 U.S. Census, *in* WIKIMEDIA COMMONS (Apr. 10, 2012), https://commons.wikimedia.org/wiki/File:San_Jose_Demographics_2010.jpg
[3] Nathan Donato-Weinstein, *San Jose Mayor-elect Liccardo Selects Chamber Insider, Council Member for Key Posts*, SILICON VALLEY BUS. J. (Dec. 31, 2014), https://www.bizjournals.com/sanjose/news/2014/12/31/san-jose-mayor-elect-liccardo-selects-chamber.html.
[4] Jana Kadah, *San Jose Mayor Raises Six Figures Before Stepping Down from PAC*, SAN JOSE SPOTLIGHT (Mar. 24, 2022), https://sanjosespotlight.com/san-jose-mayor-raises-six-figures-before-stepping-down-from-pac/.
[5] *See Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 360 (2010); *SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686, 696 (D.C. Cir. 2010).

intermediate scrutiny used for nonpolitical commercial speech regulations. The Court should find that the government has an important interest in stopping election corruption and distortion. This ruling would open the door to reviving the Bipartisan Campaign Finance Reform Act (BCRA)'s independent corporate expenditure limits and expand existing direct contribution limits for candidates to their single-candidate super PACs, making elections fairer for all.

I. Corporations Are Not People

Corporations are not people due to their special privileges under state laws that help them "obtain an unfair advantage in the political marketplace."[6] For instance, corporations have limited liability where shareholders are not responsible for their debts.[7] This occurs even when negligence results in death or injury[8] and confers corporations substantial capital investment advantages, letting them accumulate more money than any individual could.[9] In addition, many states give corporations perpetual life[10] no matter who leaves the organization, allowing them to restructure at will to elongate survival.[11] Furthermore, corporations get favorable treatment in distributing and accumulating assets.[12] This includes unregulated derivatives, credit default swaps, inflation of their property, "wildly excessive and irresponsible CEO and executive compensation," and "billions in government bailouts."[13] Most Americans do not get these

[6] *Austin v. Mich. Chamber of Com.*, 494 U.S. 652, 658–59 (1990).
[7] JEFFREY D. CLEMENTS: CORPORATIONS ARE NOT PEOPLE: WHY THEY HAVE MORE RIGHTS THAN YOU DO AND WHAT CAN YOU DO ABOUT IT 62 (2012).
[8] *Id.*
[9] *Id.* at 63.
[10] *Id.* at 64.
[11] Clements, *supra* note 7 at 64.
[12] *Id.* at 122.
[13] *Id*.

exemptions.[14] While Wall Street got a $498 billion bailout in 2008 and 2009[15] and pays a mere 19.7% in taxes,[16] individuals received only $3200 each during the entire COVID-19 pandemic.[17]

II. Intermediate Scrutiny

Because corporations are not people, the First Amendment should not protect their political speech with the same rigor that it protects the individual's. Therefore, the lack of individual limits on campaign expenditures articulated in *Buckley* should not apply to businesses.[18] Instead, corporate political speech should be subject to the same rules that other forms of corporate speech play by. In *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York*, the Court held that corporate speech falls into a "less protected" category and should be governed solely in relation to the company's economic interests and their audience.[19] If the government's restriction on corporate speech is justified by a substantial interest, directly advances that interest, and is narrowly tailored to achieve its objective, it passes constitutional muster.[20] Many legitimate government interests have merited a restriction on corporate speech, including bans on gambling ads,[21] in-person solicitation[22] and

[14] Jim Puzzanghera, *A Decade after the Financial Crisis, Many Americans Are Still Struggling to Recover*, L.A. TIMES (Sep. 8, 2018), https://www.latimes.com/business/la-fi-financial-crisis-middle-class-20180909-htmlstory.html.
[15] Deborah Lucas, Measuring the Cost of Bailout 24 (Feb. 2019) (unpublished manuscript) (on file with the Massachusetts Institute of Technology).
[16] Peter G. Peterson, *What Is the Difference Between the Statutory and Effective Tax Rate*, PETER G. PETERSON FOUND. (Mar. 21, 2012), https://www.pgpf.org/blog/2022/03/what-is-the-difference-between-the-statutory-tax-rate-and-the-effective-tax-rate#:~:text=However%2C%20the%20U.S.%20tax%20code,was%2019.7%20percent%20in%202021.
[17] ADVANCE CHILD TAX CREDIT AND ECONOMIC IMPACT PAYMENTS – STIMULUS CHECKS, USA.GOV (Mar. 10, 2022), https://www.usa.gov/covid-stimulus-checks#:~:text=With%20Vaccines.gov-,COVID%2D19%20Stimulus%20Checks%20for%20Individuals,%241%2C400%20in%20March%202021.
[18] *See Buckley v. Valeo*, 424 U.S. 1, 45 (1976).
[19] *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 563 (1980).
[20] *Greater New Orleans Broad. Ass'n, Inc. v. U.S.*, 527 U.S. 173, 188 (1999).
[21] *Posadas de P.R. Assocs. v. Tourism Co. of P.R.*, 478 U.S. 328, 329 (1986).
[22] *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 460 (1978).

posters[23] that have an inherent risk of deception. Two substantial interests merit restrictions on corporate election expenditures: preventing election corruption and distortion.

III. Preventing Corruption

Corruption may occur even without a formal handshake.[24] This takes the form of collusion between super PACs, donors, and candidates as well as corporate influence over policymaking, both of which lead to a loss of public faith in democracy. The government therefore has an important anti-corruption interest in curtailing political expenditures.

First, the Court's fantasy that candidates do not "coordinate" with their super PACs is false. Candidates often set up super PACs specifically designed for corporate donations that are run by people closely affiliated with them.[25] This includes President Barack Obama's former aides working for his super PAC, Priorities USA Action, and Roger Spies, general counsel to then-Governor Mitt Romney, working for Romney's 2012 super PAC, Restore Our Future.[26] President Joe Biden's super PAC was run by Steve Schale, a former aide.[27]

Moreover, super PACs share pollsters, vendors, media buyers, television producers, and fundraisers with their candidate.[28] Footage from super PACs have been shown by candidates' official campaigns,[29] and candidates have attended their super PAC's fundraisers.[30] Super PACs are therefore "alter egos for the official campaign committees of the candidates."[31] They

[23] *Friedman v. Rogers*, 440 U.S. 1, 15 (1979).
[24] *Citizens United*, 558 U.S. at 360.
[25] Richard Briffault, *Coordination Reconsidered*, 113 COLUM. L. REV. SIDEBAR 88, 89 (2013).
[26] *Id.* at 90.
[27] *This Week in South Fla.: Steve Schale & Marili Cancio*, LOC. 10 NEWS (Oct. 25, 2020), https://www.local10.com/news/local/2020/10/25/this-week-in-south-florida-steve-schale-and-marili-cancio/.
[28] Briffault, *supra* note 25, at 91.
[29] *Id*.
[30] BRENT FERGUSON, CANDIDATES & SUPER PACS: THE NEW MODEL IN 2016, 3 BRENNAN CTR. FOR JUST. (2016), https://www.brennancenter.org/sites/default/files/publications/Super_PACs_2016.pdf.
[31] Briffault, *supra* note 25, at 91.

circumvent non-coordination rules with "relative ease" through having a candidate's confidants "tell a would-be donor…precisely how to spend money to benefit the campaign."[32] Non-coordination is a fantasy when collusion among super PACs, campaigns, and their corporate donors is normal and makes the super PAC and the candidate essentially one campaign.

Second, knowing that they need to chase money in a race, candidates will prioritize corporate donors' ideas instead of listening to their community. The *Buckley* Court noted that collusion between candidate and donor "posed a direct threat of corruption similar to bribery—donors might give to a candidate or officeholder with the understanding that, in return, the officeholder…would take some official action he would not otherwise take."[33] In a *BusinessWeek* poll, 50% of executives believed that their contributions secured access to lawmakers, while 41% wanted preferential consideration on regulations impacting their business.[34] This influence is likely why some corporations spend excessively on elections,[35] leading to a society where winning candidates are accountable mostly to wealthy contributors.[36]

Actual candidate campaign behavior backs this up. Senator Mitch McConnell promised "leadership, friendship, effectiveness, and *exclusivity*" in exchange for $5000, while Congressman Tom DeLay maintained records of large PAC contributions.[37] Los Angeles Mayor Antonio Villaraigosa's gubernatorial campaign was heavily bankrolled[38] by charter school

[32] Bradley A. Smith, *Super PACs and the Role of Coordination in Campaign Finance Law*, 49 WILLAMETTE L. REV. 603, 607–08 (2013).
[33] *Id.* at 613, citing *Buckley*, 424 U.S. at 20–21.
[34] Russell D. Feingold, *Representative Democracy versus Corporate Democracy: How Soft Money Erodes the Principle of One Person, One Vote*, 35 HARV. J. ON LEGIS. 377 (1988).
[35] Smith, *supra* note 32, at 614 (citing *Buckley*, 424 U.S. at 45).
[36] Adam Lioz & Liz Kennedy, *Democracy at Stake: Political Equality in the Super PAC Era*, 39 HUM. RTS. 15, 17 (2012).
[37] Feingold, *supra* note 34, at 381–82 (emphasis added).
[38] Seema Mehta & Melanie Mason, *Wealthy Charter School Backers Gambled on Villaraigosa and Lost. Now They're on Shaky Ground with Newsom*, L.A. TIMES (Jun. 15, 2018), https://www.latimes.com/politics/la-pol-ca-charter-school-california-governors-race-newsom-villaraigosa-20180615-story.html.

proponents that ran ads[39] villainizing[40] then-Lieutenant Governor Gavin Newsom for favoring traditional public schools. Villaraigosa then supported charter schools vigorously.[41] Then-candidate Donald Trump was supported[42] by telecom giants[43] like AT&T, Comcast, and T-Mobile. These companies opposed[44] net neutrality rules implemented[45] by Federal Communications Commission (FCC) Chair Tom Wheeler. When he became president, Trump nominated Ajit Pai to be FCC Chair. Pai revoked[46] net neutrality, allowing these companies to prioritize content from wealthy payers. While none of these instances are *quid pro quo*, they still corrupt because corporations exact far more political influence than the average individual.

Post-*Citizens United*, there was an 8% reduction in corporate income tax in states that had previously banned corporate independent expenditures.[47] Significant reductions in plaintiff-friendly civil litigation standards occurred, while no appreciable effect was seen on policies that lacked clear corporate interests, such as abortion, eminent domain, and gun control.[48] This evidence indicates why BCRA had a substantial anti-corruption interest in prohibiting corporate

[39] Joe Garofoli, *Charter-schools Group Spends Big on Ad Campaign backing Antonio Villaraigosa*, S.F. CHRON. (Apr. 19, 2018), https://www.sfchronicle.com/politics/article/Charter-schools-group-spends-big-on-ad-campaign-12848743.php.
[40] Sally Ho, *Charter Schools Regroup after Big California Election Loss*, ASSOC. PRESS (Jun. 10, 2018), https://apnews.com/article/dbaef15f1ca14e38a673cec1f92a4c8c.
[41] Howard Blume, *Former L.A. Mayor Antonio Villaraigosa Endorses Charter Expansion Effort*, L.A. TIMES (Sep. 29, 2015), https://www.latimes.com/local/lanow/la-me-ln-villaraigosa-endorses-charter-effort-20150929-story.html.
[42] Mike Dano, *Telecom Industry's Political Contributions Remain in the Spotlight*, LIGHT READING (May 3, 2021), https://www.lightreading.com/ossbsscx/telecom-industrys-political-contributions-remain-in-spotlight/d/d-id/769211.
[43] Klint Finley, *The One Telecom Group That Does Support Net Neutrality*, WIRED (Aug. 7, 2018), https://www.wired.com/story/the-one-telecom-group-that-does-support-net-neutrality/.
[44] Devin Coldewey, *These Are the Arguments Against Net Neutrality and Why They're Wrong*, TECHCRUNCH (May 19, 2017), https://techcrunch.com/2017/05/19/these-are-the-arguments-against-net-neutrality-and-why-theyre-wrong/?guccounter=1.
[45] Jacob Kastrenakes, *Outgoing FCC Chief Tom Wheeler Offers Final Defense of Net Neutrality*, THE VERGE (Jan. 13, 2017), https://www.theverge.com/2017/1/13/14266168/tom-wheeler-final-speech-net-neutrality-defense.
[46] Cecilia Kang, *F.C.C. Repeals Net Neutrality Rules*, N.Y. TIMES (Dec. 14, 2017), https://www.nytimes.com/2017/12/14/technology/net-neutrality-repeal-vote.html.
[47] Martin Gilens et al., *Campaign Finance Regulations and Public Policy*, 115 AM. POL. SCI. REV. 1074, 1079 (2021).
[48] *Id.* at 1075.

campaign expenditures that go beyond *quid pro quo*.[49] Corporate spending on their preferred candidates and referenda result in their preferred policies. No secret handshake is needed.

Third, contrary to Justice Kennedy's opinion in *Citizens United*,[50] corruption causes a loss of faith in democracy, which gives the government an important interest in regulating corporate campaign expenditures. Donors' disproportionate influence over election outcomes and unfair access to candidates[51] causes voters to be cynical about their power to decide elections, which erodes public trust in government and decreases political efficacy.[52] Statistical research confirms these concerns.[53] More than 66% of respondents thought that donations over $5000 led to some corruption, while over 51% thought that $1 million or more spent on independently financed ads led to some corruption.[54] That number climbed to 73% when negative ads were involved.[55] Even a mere appearance of corruption or collusion is enough for the public to infer improper encouragement and become less trustful of their elected officials.[56] This rebuts Justice Kennedy's assumptions and demonstrates why the government has a substantial anti-corruption interest in regulating corporate campaign expenditures.[57]

Unfettered corporate election spending foments corruption through collusion among candidates and donors and corporate influence over policymaking. This causes a loss of a faith in democracy and creates an important interest in regulating corporate campaign expenditures.

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[49] *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 95–96 (2003).
[50] *See Citizens United*, 558 U.S. at 360.
[51] *See* Richard L. Hasen, *Super PAC Contributions, Corruption, and the Proxy War over Coordination*, 9 DUKE J. CONST. L. & PUB. POL'Y. 1, 5 (2014).
[52] Nicholas G. Bushelle, *Appearance Is Everything: Why Imposing Expenditure Limits on Hybrid PACs without Functional Separation Is Essential to Democracy*, 105 IOWA L. REV. 341, 357 (2019).
[53] *See generally* Shaun Bowler & Todd Donovan, *Campaign Money, Congress, and Perceptions of Corruption*, 44 AM. POL. RSCH. 272 (2016).
[54] *Id.* at 285.
[55] *Id.* at 286.
[56] *See id.* at 288–89.
[57] *See Citizens United*, 558 U.S. at 360.

IV. Stopping Distortion

Anti-distortion forms a second substantial government interest in regulating corporate campaign spending. Corporate expenditures must reflect actual public support instead of distorting the playing field of ideas through unlimited money.[58] This extends the one person, one vote principle from voting to influencing votes in elections.[59] Real political power depends on the ability to spend money in support of one's views.[60] Voters recognize this in their anger and frustration at "being excluded from their own political system," as politicians promise "effectiveness [and] exclusivity" only to their most prized donors.[61]

Second, the anti-distortion principle is an important government interest because it recognizes money as a barrier to voting, much like malapportionment, property rights,[62] poll taxes, residency requirements, filing fees, and grandfather clauses did in past eras.[63] The Court was initially skeptical of all these factors' negative impact on the vote before it gradually incorporated them into its precedent.[64] When money is the obstacle, unequal weight is given to people with the means to donate.[65] This thereby elevates their concerns over those of poorer people, because candidates will exclusively raise money from and listen to them.[66]

For instance, wealthy citizens making more than $125,000 a year are over 10 times as likely to donate despite their small proportion of the population.[67] Senate re-election PACs raise

[58] *Austin*, 494 U.S. at 1398.
[59] *See id.*
[60] Burt Neuborne, *One Dollar-One Vote: A Preface to Debating Campaign Finance Reform*, 37 WASHBURN L. J. 1, 10 (1997).
[61] *See* Feingold, *supra* note 34, at 381, 385.
[62] David A. Strauss, *Corruption, Equality, and Campaign Finance Reform*, 94 COLUM. L. REV. 1369, 1383–85 (1994).
[63] Jamin Raskin & John Bonifaz, *Equal Protection and the Wealth Primary*, 11 YALE L. & POL'Y REV. 273, 274 (1993).
[64] *See* Strauss, *supra* note 62, at 385.
[65] *See* Raskin & Bonifaz, *supra* note 63, at 294.
[66] *See id.* at 293.
[67] *Id.* at 294.

most of their money (sometimes over 90%) from wealthy entities who do not reside in their states.[68] In this environment, small-dollar donations will not reach as many households as wealthy companies with an agenda.[69] For example, Uber and Lyft used their massive war chests[70] and ridesharing apps[71] to convince Californians that drivers wanted to be individual contractors without access to health insurance, unemployment insurance, and a minimum wage.[72] Public interest groups and worker coalitions[73] were no match for this massive spending imbalance.[74] Money does not prioritize equal time and space for viewpoints, and effectively gives companies license to buy elections. This distortion of politics to benefit corporate policy priorities furthers the government's important goal of limiting corporate campaign expenditures.

Critics like Justice Kennedy may argue that the anti-distortion rationale cannot be valid because it constitutes "censorship to control thought," and destroys the "liberty of some factions."[75] However, most democracies regulate campaign expenditures,[76] including the United Kingdom and Canada.[77] In the UK, campaign expenditures are capped for corporations and parties.[78] In Canada, any group spending $500 or more must register as a party.[79] Canada also

[68] *Id.* at 296.
[69] *See id.* at 277, 280.
[70] Caroline O'Donovan, *Uber and Lyft Spent Hundreds of Millions to Win Their Fight over Workers' Rights. It Worked*, BUZZFEED NEWS (Nov. 21, 2020), https://www.buzzfeednews.com/article/carolineodonovan/uber-lyft-proposition-22-workers-rights.
[71] Suhauna Hussain et al., *How Uber and Lyft Persuaded California to Vote Their Way*, L.A. TIMES (Nov. 13, 2020), https://www.latimes.com/business/technology/story/2020-11-13/how-uber-lyft-doordash-won-proposition-22.
[72] Emerald Law, *California Prop 22: Impact on Employee Benefits*, FOREWORD: SEQUOIA BLOG (Nov. 3, 2020), https://www.sequoia.com/2020/11/california-prop-22-impact-on-employee-benefits/.
[73] Lauren Helper, *After Gig Companies' Prop. 22 Win, Labor Groups Vow Challenges*, CALMATTERS (Nov. 4, 2020), https://calmatters.org/economy/2020/11/after-gig-companies-prop-22-win-labor-groups-vow-challenges/.
[74] Lindsey Feingold, *Here's Who Donated in Support and against Each California Proposition*, ABC 7 NEWS (Nov. 4, 2020), https://abc7news.com/california-props-propositions-prop-22-campaign-donations/7625556/.
[75] *Citizens United*, 558 U.S. at 354.
[76] Alexander Fouirnaies, *How Do Campaign Spending Limits Affect Elections? Evidence from the United Kingdom 1885–2019*, 115 AM. POL. SCI. REV. 395 (2021).
[77] Kelsey Shoub, Campaign Finance in the United States, the United Kingdom, and Canada 21, 24 (Apr. 2013) (B.A. thesis, The Ohio State University).
[78] *Id.* at 20–21.
[79] Shoub, *supra* note 77, at 24.

mandates all campaign spending be kept with a 36-day election window.[80] Both these countries rate highly in Freedom House's democracy index.[81] Tyranny does not occur when spending limits are enforced.[82] Instead, spending limits increased competition and favored wealthier candidates less.[83] A decrease of roughly $12,000 in the spending limit meant having one more candidate out of a field of 20 in the fold and a 0.75% decrease in an incumbent's percentage.[84]

Because massive corporate spending distorts the vote, the government has an important reason for imposing corporate campaign expenditure limits.

V. Narrowly Tailored Solutions

Because anti-distortion and anti-corruption are important government interests in enacting corporate campaign expenditure limits, narrowly tailored solutions may be created.[85] First, reviving BCRA Section 203's prohibitions on independent corporate campaign expenditures and communications would not be overbroad.[86] Section 203 reduced[87] the dumping of television ads and forced candidates to rely on traditional canvassing and mobilization.[88] There were no effects on robust, open, and ubiquitous speech[89] and corporations did not circumvent these rules by placing money in PACs due to their own donation limits.[90]

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[80] Lisa Young, *Regulating Campaign Finance in Canada: Strengths and Weaknesses*, 3 ELECTION L. J. 444, 448 (2004).
[81] GLOBAL FREEDOM SCORES, FREEDOM HOUSE (2022), https://freedomhouse.org/countries/freedom-world/scores (finding that Canada scores 98, the United Kingdom scores 93, and the United States scores 83, with higher scores indicating more freedom).
[82] *See id*.
[83] *See* Fouirnaies, *supra* note 76, at 406–07.
[84] *See id.*
[85] *Greater New Orleans*, 527 U.S. at 188.
[86] *McConnell*, 540 U.S. at 204–207.
[87] *See id.* at 207; MICHAEL J. MALBIN, THE ELECTION AFTER REFORM: MONEY, POLITICS, AND THE BIPARTISAN CAMPAIGN REFORM ACT 3–4, 13 (2006).
[88] Malbin, *supra* note 87, at 3, 13.
[89] *Id.* at 3.
[90] *See* Susan Clark Muntean, *Corporate Contributions after the Bipartisan Campaign Reform Act*, 7 ELECTION L. J. 233, 234 (2008) (citing Malbin, *supra* note 87, at 15).

Second, BCRA limits on direct contributions to campaigns should also be applied to single-candidate super PACs. Donation limits to campaigns are legal if they are not aggregated,[91] and the Court still recognizes an anti-corruption rationale in preventing *quid pro quo* corruption from direct contributions to campaigns.[92] Because super PACs and candidates are basically one entity,[93] with super PAC money being "just as valuable as campaign coffers,"[94] direct contribution limits that apply for campaigns should also apply for their super PACs.

VI. Conclusion

In conclusion, corporations have substantial legal privileges that enable them to amass wealth as no person can. Therefore, strict protection of political speech cannot apply to corporate entities, and intermediate scrutiny should be used. The government has an important interest in preventing corruption and distortion, opening two narrowly tailored solutions. The first is a reintroduction of BCRA Section 203 and its effective limits on corporate campaign expenditures. The second extends existing limits on direct campaign contributions to single-candidate super PACs, because they function as a single entity with their campaigns. Reducing corporate campaign influence through these measures will lessen corruption, improve the public's faith in democracy, and include all Americans in the electoral process.

[91] *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1437 (2014).
[92] *Citizens United*, 558 U.S. at 356–57 (noting that there are "limits on direct [campaign] contributions to ensure against the reality or appearance of corruption").
[93] Briffault, *supra* note 25, at 91.
[94] Hasen, *supra* note 51, at 13.

Applicant Details

First Name	**Chandana**
Last Name	**Pandurangi**
Citizenship Status	**U. S. Citizen**
Email Address	**pandurac@bc.edu**
Address	**Address** **Street** **11 Camelot Court, 2A** **City** **Brighton** **State/Territory** **Massachusetts** **Zip** **02135** **Country** **United States**
Contact Phone Number	**6098655440**

Applicant Education

BA/BS From	**Case Western Reserve University**
Date of BA/BS	**May 2019**
JD/LLB From	**Boston College Law School** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=12201&yr=2011**
Date of JD/LLB	**May 21, 2024**
Class Rank	**50%**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/ Journal	**No**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Grimes Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Noble, Alice
alice.noble@bc.edu
Jeffrey, Cohen
jeffrey.cohen.4@bc.edu
Williams, Ryan
Willibit@bc.edu

References

Professor Ryan Williams
Email: willibit@bc.edu
Number: 617-552-4340

Professor Alice Noble
Email: nobleal@bc.edu
Number: 781-736-2764

Professor Jeffrey Cohen
Email: jeffrey.cohen.4@bc.edu
Number: 617-552-4492

This applicant has certified that all data entered in this profile and any application documents are true and correct.

CHANDANA PANDURANGI

● 11 Camelot Court, Brighton, MA 02135 ● pandurac@bc.edu ● 609-865-5440 ●

June 20, 2023

The Honorable Casey Pitts
United States District Court, Northern District of California
Robert F. Peckham Federal Building & United States Courthouse
280 South 1st Street, Room 2112
San Jose, CA 95113

Dear Judge Pitts:

I am a rising third-year law student at Boston College Law School, and I am writing to apply for a clerkship with your chambers for the 2024-2025 term. My strong research and writing skills and exposure to a wide variety of issues within federal and administrative law make me an ideal candidate for a clerkship. I am especially interested in your chambers because of your history and experience in civil rights litigation.

During my time at Boston College Law School, I have gained significant experience in various types of legal writing. While I was a judicial intern with The Honorable Marianne Bowler at the District of Massachusetts, I drafted opinions analyzing legal issues presented to the Court and observed numerous meditations on criminal, personal injury, and intellectual property matters. While externing with Kate Farms, a company focused on providing plant-based nutrition options to patients in acute care settings, I edited contracts to protect Kate Farms in a landscape of changing data privacy rights. At school, I wrote for the Intellectual Property and Technology Forum Journal, where I analyzed the nature of Copyright in relation to fashion design in light of the Supreme Court's decision in *Varsity v. Star Athletica,* and further honed my advocacy skills in Boston College's Grimes Moot Court Competition.

My professional experiences have equipped me with a strong foundation in federal law. This summer, I will be splitting my time between the Environmental Protection Agency and the United States Patent and Trademark office. While at the EPA, I have already deepened my understanding of administrative law and contributed to ongoing arguments within the First Circuit. Previously at the New Jersey Attorney General's office, I explored the conflicts between federal and state health insurance law, and statutory schemes.

Enclosed within this application are my resume, law school transcript, and writing samples. Additionally you will be receiving letters of recommendations from Professors Ryan Williams, Jeffrey Cohen and Alice Noble, who are all happy to speak with you directly. Thank you for your time and consideration. I look forward to hearing from you.

Respectfully,

Chandana Pandurangi

CHANDANA PANDURANGI

• 11 Camelot Court, Brighton MA 02135 • pandurac@bc.edu • 609-865-5440 •

EDUCATION

Boston College Law School Newton, MA
Candidate for Juris Doctor May 2024
GPA: 3.41/4.0
Activities: Grimes Moot Court Competition; Intellectual Property and Technology Forum, *Staff Writer for the IPTF Journal;* South Asian Law Students Association, *Treasurer and Secretary*; Public Interest Law Foundation, *Director of Public Interest Celebration*

Case Western Reserve University Cleveland, OH
Bachelor of Science, Chemistry; Minors in Biology and Public Policy May 2019
Honors: Costin D. Nenitzescu and Margareta Avram Award for Outstanding Research
Senior Thesis: *Synthesis of Brominated Carbenes with Fluorescent Applications*

EXPERIENCE

United States Patent and Trademark Office Alexandria, VA
Legal Intern at the Office of Patent and Legal Administration July 2023 – August 2023
- Anticipated duties include updating Manual of Patent Examining Procedure, observing Patent Trial and Appeal Board and Inter Partes Review Proceedings and assisting in legal redetermination.

Environmental Protection Agency Boston, MA
Legal Intern May 2023 – July 2023
- Wrote Motions to Terminate Consent Decrees against violating organizations.
- Researched legal arguments in anticipation of ongoing litigation and oral arguments.
- Will work on Clean Water, Air, and Toxic Substances Control regulatory matters.

Kate Farms Boston, MA
Legal Extern January 2023 – May 2023
- Edited contracts between Kate Farms and outside entities for data privacy and IP concerns.
- Researched regulatory issues applicable to Kate Farms to update compliance measures.

United States District Court for the District of Massachusetts Boston, MA
Legal Extern, Hon. Judge Marianne Bowler, U.S.M.J. August 2022 – December 2022
- Observed court proceedings, mediations and arbitrations.
- Drafted Motions to Dismiss for criminal matters.

New Jersey Attorney General's Office, Division of Law Newark, NJ
Legal Intern in the Government and Healthcare Fraud Section May 2022 – August 2022
- Researched legal issues regarding False Claims Act in insurance and healthcare providers.
- Conducted document review summaries and edited legal documents.
- Drafted memoranda involving public funds and environmental fraud.

Paul, Weiss, Rifkind, Wharton, and Garrison LLP New York, NY
Patent Litigation Paralegal August 2019 – July 2021
- Assisted attorneys with factual research, organizing, and producing legal documents for hearings, depositions, trials and other meetings.
- Involved with the pro bono and patent groups in matters regarding patent litigation, contract disputes, COVID-19 response involving at-risk groups and judicial appointments.

INTERESTS

Reading Fiction. Visiting National Parks. Makeup Artist and Skincare Enthusiast. Reality TV Fan. Board Game Lover. Amateur Chef.

BOSTON COLLEGE | LAW

Unofficial Grade Sheet

Date Prepared: 6/09/2023

Student Name: Chandana Pandurangi

Anticipated Graduation: Spring 2024

Cumulative GPA: 3.41

Address: 11 Camelot Court, 2A

City, State, Zip, Phone Number:

Brighton, MA, 02135, 609-865-5440

Email: pandurac@bc.edu

Spring Semester 2023

Course Title	Instructor	Credits	Grade
Professional Responsibility	Stacey Best	2	A-
Evidence	Jeffrey Cohen	3	A-
Intellectual Property Survey	Alfred Yen	3	A-
Legal Practice Externship and In-House Seminar	Janelle Peiczarka	5	P

Fall Semester 2022

Course Title	Instructor	Credits	Grade
Federal Courts	Ryan Williams	3	A-
Health Law	Alice Noble	3	A
Energy Law	Dennis Duffy & John Moskal	2	B
Legal Practice Externship and Judicial Process Seminar	Erin Macgowan	5	P

Spring Semester 2022

Course Title	Instructor	Credits	Grade
Property	Daniel Lyons	4	A-

**This grade sheet has been self-prepared by the above-named student. The student will bring a copy of an "Unofficial Transcript" at the time of an interview or forward one at the request of an employer.*

BOSTON COLLEGE | LAW

Unofficial Grade Sheet

Constitutional Law	Ryan Williams	4	B+
Criminal Law	Steven Koh	4	B+
Law Practice II	Jeffrey Cohen	2	B+
Intro to Appellate Judging	Andrew Grainger	3	A-

Fall Semester 2021

Course Title	Instructor	Credits	Grade
Contracts	Brian Quinn	4	B+
Civil Procedure	Linda Simard	4	B
Torts	Dean Hashimoto	4	B
Law Practice I	Jeffrey Cohen	3	B
Critical Perspectives in Law and Professional Identity	Paul Tremblay	1	P

**This grade sheet has been self-prepared by the above-named student. The student will bring a copy of an "Unofficial Transcript" at the time of an interview or forward one at the request of an employer.*

June 20, 2023

The Honorable P. Casey Pitts
Robert F. Peckham Federal Building & United States Courthouse
280 South 1st Street, Room 2112
San Jose, CA 95113

Re: Clerkship Candidacy of Chandana Pandurangi

Dear Judge Pitts:

I am delighted to write this letter in support of Chandana Pandurangi for a judicial clerkship. Ms. Pandurangi was a student in my Health Law course at Boston College Law School in 2022. Health Law is a survey course that is conducted as a seminar, where student participation is key to the course's success. Her course grade of A was derived from written submissions and class participation. The written assignments, unlike traditional law school exams, ask students to respond to a simulated client-based problem, like one they may be assigned in law practice. Students are expected to perform legal research and respond with an inter-office memo to a "supervisor", and in one case a blog post, based on rigorous analysis of legal authority. Ms. Pandurangi was a top performer among an impressive group of students. Also, she raised insightful questions during class, demonstrating attention to detail, quick thinking, and analytical skill.

Ms. Pandurangi stood out among her colleagues in both her written and oral communications. She often contributed to class discussion. Ms. Chandana's participation in moot court doubtless contributes to her assured, succinct, and organized presentation that manages to capture the key legal arguments as well as her classmate's attention. Her talent for legal analysis is also reflected in her writing ability. Her blog post and memos were well-written and to the point; her legal analysis and wording were clear and precise. She is able to steer the reader through the thicket of legal analysis both logically and persuasively. In short, Ms. Pandurangi has the requisite skill set to succeed as a judicial clerk.

Ms. Pandurangi has a desire to learn all she can about the law and legal practice. She is personally interested in a career in government service, and is continuing to gain relevant experience through a student clerkship and internships with federal agencies. Ms. Pandurangi fully appreciates the value of a clerkship to her development as a lawyer, and would make the most of the opportunity should she be selected. I highly recommend Chandana Pandurangi.

I am happy to provide further information concerning the candidate, and can most easily be reached at alice.noble@bc.edu.

Sincerely,

Alice A. Noble, J.D., M.P.H.
Adjunct Professor

June 20, 2023

The Honorable P. Casey Pitts
Robert F. Peckham Federal Building & United States Courthouse
280 South 1st Street, Room 2112
San Jose, CA 95113

Re: Clerkship Candidacy of Chandana Pandurangi

Dear Judge Pitts:

I am delighted to write to you to recommend Chandana Pandurangi for a clerkship in your chambers.

Chandana was a student in my Law Practice class during the 2021-22 academic year. Law Practice is a full-year required course in which all 1L students learn practical skills through simulation-based classroom exercises. Through this course, my students practice researching cases and statutes; crafting effective legal arguments; drafting objective office memoranda; and writing persuasive court documents, namely motions and memoranda of law. Law Practice requires a significant time commitment from 1L students, and they receive a lot of individual attention from me. In this context, I have come to learn that Chandana is a talented writer and a sophisticated thinker, and I have no doubt that she will be an exceptional clerk.

Chandana distinguished herself in the first few classes of the semester, during which she was noticeably attentive, insightful, and participatory without pretension. Our class moved quickly to cover a breadth of content, and Chandana was fully engaged. She consistently writes well-reasoned, polished work product, earning high marks on all of her assignments. Her research skills are also well-developed. During the term, she conducted wide-ranging research involving federal cases and statutes, state cases and statutes, and secondary sources. Her ability to find and grasp applicable authority and then synthesize that authority into well-reasoned arguments is excellent.

Chandana was also an incredibly curious and diligent student. She asked thoughtful questions both during and outside of class to confirm her understanding of key principles and strategies so that she could integrate them into her work. This highlights her genuine interest and fascination with the law—she truly strives to understand legal concepts in all of their intricacies, and is not looking for short-cuts or ways to gloss over complexity.

I also had Chandana in my Evidence class last semester. My Evidence class challenges students to analyze and effectively argue differing interpretations of the Federal Rules of Evidence and to understanding how the Rules relate to each other in creating a coordinated system to guide judicial discretion in conducting a trial. As a former Assistant United States Attorney, I place a high emphasis on a practical application of the Rules. Chandana was a strong student. She received an A-, which is a very difficult grade to receive. Chandana's classroom questions revealed to me that she has a strong grasp of the material. I appreciated most that she also wanted to understand the practical ramifications of the Rules on the parties and the jury.

Beyond Chandana's broad skills, she also has an incredibly genial personality. She is affable, good-natured and highly professional.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Jeffrey M. Cohen
Associate Professor
Boston College Law School

June 20, 2023

The Honorable P. Casey Pitts
Robert F. Peckham Federal Building & United States Courthouse
280 South 1st Street, Room 2112
San Jose, CA 95113

Re: Clerkship Candidacy of Chandana Pandurangi

Dear Judge Pitts:

I am writing on behalf of my student, Chandana Pandurangi, in support of her application for a position as a judicial clerk. Based on my experiences with Chandana, I have no hesitation extending to her my highest recommendation for a judicial clerkship position.

I first met Chandana in Spring 2022 when she was enrolled as a student in my first year Constitutional Law course. Like most first-year students, Chandana was relatively quiet during the first portion of the semester, participating only when called upon. Given the large size of the class, most students could expect to be called on only a handful of times over the course of a semester and it was a while before I reached Chandana on my call list. When I did finally call on her, I found her responses to be thoughtful, well-considered, and reflecting a clear understanding of the material. As the semester progressed, I noticed Chandana participating more in class discussions. Her contributions were consistently thoughtful, respectful, and well-informed.

Toward the end of the semester, Chandana approached me seeking advice about her course selection for the following semester. In particular, she expressed an interest in the Federal Courts class that I would be teaching in the Fall of 2022. She explained that she was very interested in the course and that she believed it would be useful to her future career and to her goal of pursuing a judicial clerkship following graduation. She was concerned, however, about the potential demands of the course and her ability to balance those demands with the rest of her class schedule during the Fall semester of her second year. I explained that the class would not be easy and that she should be prepared for the reading assignments to be extensive and challenging. I advised that she may want to consider delaying taking the course until her third year unless she was confident of her ability to handle the workload.

A short time later, Chandana informed me that she had considered the matter and did not want to put off taking the class. Given her initial reticence and her expressed concerns about balancing the course with her other commitments, I was impressed by both the confidence she displayed in her ability to handle the challenges the course would present and her determination in pursuing her goals.

As I promised her, the course was not easy. I explain to all my students at the outset of the class that the breadth and complexity of the subject matter require significant investments of time and effort on the part of all students. And at an early point in each semester, I can usually sense a large portion of the class wondering exactly what they have gotten themselves into.

Chandana was no exception. Although, as she had done in the first-year Constitutional Law class, Chandana remained consistently well-prepared for each class and an active participant in class discussions, she—like nearly all students who take the course—took some time getting comfortable with the complexities and contradictions that characterize the field. She was a frequent visitor to my office hours, posing thoughtful questions that allowed me to clarify points that had remained obscure from the readings and class discussion. These visits gave me an opportunity to get to know Chandana better and to see the effort she was putting in to make sure she understood not only the big-picture takeaways of each case and doctrine we studied but also the subtler distinctions and nuances that are necessary to fully grasp the relevant concepts. As the semester progressed, I could see her gaining greater confidence as her command of the subject matter increased. Nonetheless, as we neared the end of the semester, I could sense that she still had some reservations about her ability to display her knowledge on the exam.

As it turns out, her concerns were unfounded. Chandana performed excellently on the exam. Given the distribution of scores in the class and the requirements of our grading curve, I was only able to award two “A” grades for the entire course. But Chandana’s score fell just below the cutoff that would have merited that grade (she wound up receiving an “A-”). The only meaningful distinction between her exam and those that received the higher grade seemed to be the result of time pressure that prevented her from addressing the final question with the fullness that I’m confident she could have done had she been given just a bit more time. Her exam reflected an impressive grasp of the subject matter, and an ability to break down and analyze complex legal issues and to communicate her conclusions clearly and persuasively.

Shortly after receiving her grade, Chandana reached out to me asking to schedule some time to go over her exam answer. Although I could tell she was relieved by her score given her concerns going into the exam, she expressed a desire to learn what she could have done better and how she might be able to improve her test-taking strategies in future classes. I rarely receive such requests from students who perform as well in the class as Chandana did. But it was fully reflective of the diligence, commitment, and desire to improve that I’ve come to expect from her.

From conversations with Chandana outside of class, I know that she is very interested in pursuing a judicial clerkship opportunity and that she chose to take the Federal Courts course, in part, because it would help her to develop skills that she could use in a clerkship position. I have every confidence that Chandana will bring the same level of diligence, intelligence, attentiveness, and preparation to her clerkship as she has brought to the classroom experience. I have no doubt that she will make an excellent

Ryan Williams - Willibit@bc.edu

judicial clerk.

Should you have any further questions or if you wish to discuss any of the above information further, please do not hesitate to let me know.

Sincerely,

Ryan C. Williams

CHANDANA PANDURANGI
•pandurac@bc.edu • 609-865-5440•

The following writing sample is an excerpt of a Motion to Dismiss I wrote for the Honorable Judge Marianne Bowler. All names, locations and dates have been changed for confidentiality. Judge Bowler's legal clerk critiqued a previous draft.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. XX-XXXXX-AAA

UNITED STATES OF AMERICA

v.

MARTIN SMITH

REPORT AND RECOMMENDATION RE:
DEFENDANTS' MOTION TO DISMISS INDICTMENT
(DOCKET ENTRY # 54)

MONTH DAY, YEAR

BOWLER, U.S.M.J.

Pending before this court is a motion to dismiss a Superseding Indictment (Docket Entry # 54) charging defendant Martin Smith ("defendant") with Sex Trafficking of a Minor by Force, Fraud and Coercion in violation of 18 U.S.C.S. § 1591, whereby defendant "solicit[ed] by any means Minor Jane Doe ["the victim"], a person known to the Grand Jury" to "engage in a commercial sex act" (Count One). (Docket Entry # 1).

Defendant submits that the Superseding Indictment: (1) fails to provide fair notice; and (2) will not allow the defendant to bar double jeopardy in the future if defendant is prosecuted for the same offense.

STANDARD OF REVIEW

Defendant moves to dismiss the Superseding Indictment pursuant to Fed.R.Crim.P. 12(b). "When a defendant seeks dismissal of an indictment, courts take the facts alleged in the indictment as true, mindful that the question is not whether the government has presented enough evidence to support the charge, but solely whether the allegations in the indictment are sufficient to apprise the defendant of the charged offense." United States v. Ngige, 780 F.3d 497, 502 (1st Cir. 2015) (internal quotation marks omitted); United States v. Kilmartin, 99 F.Supp.3d 180, 184 (D.Me. 2015). An indictment will survive dismissal "if it specifies the elements of the offense charged, fairly apprises the defendant of the charge against which he must defend, and allows him to contest it without fear of double jeopardy." United States v. Stewart, 744 F.3d 17, 21 (1st Cir. 2014). "At the indictment stage, the government need not 'show,' but merely must allege, the required elements." Id. Courts therefore "routinely rebuff efforts to use a motion to dismiss as a way to test the sufficiency of the evidence behind the indictment's allegations." United States v. Ngige, 780 F.3d at 50 (quoting United States v. Guerrier, 669 F.3d 1, 4 (1st Cir. 2011)). As explained in Guerrier, "When grading an indictment's sufficiency," the court examines "whether the document sketches out the elements of the crime and the nature of the charge so that the defendant can prepare a defense and plead double jeopardy in any future prosecution for the same offense." United States v. Guerrier, 669 F.3d at 3.

An "indictment may use the statutory language to describe the offense, but it must also be accompanied by such a statement of facts and circumstances as to inform the accused of the specific offense with which he is charged." United States v. Savarese, 686 F.3d 1, 6 (1st Cir. 2012). Reliance on contested and disputed evidence outside an indictment when adjudicating a pre-trial motion to dismiss is not appropriate because it usurps the role of the grand jury and inevitably results in delay of the trial. See United States v. Gallant, 2010 WL 1533379, at *2 (D.N.H. Apr. 16, 2010) (citing Costello v. United States, 350 U.S. 359, 408-09 (1956)); accord United States v. Welch, 327 F.3d 1081, 1090 (10th Cir. 2003); see, e.g., United States v. Litvak, 2013 WL 5740891, at *6 (D.Conn. Oct. 21, 2013) (denying motion to dismiss indictment and noting that defendant "offers evidence outside of the Indictment" and thus "attempts to put on his case for why his alleged misstatements did not violate section 1031 in a pre-trial motion to dismiss"). Adhering to this framework, the facts, as drawn from the Superseding Indictment, show the following.

FACTUAL BACKGROUND

In 2016, the victim was in custody of the Massachusetts Department of Children and Families (DCF) after running away from home. (Docket Entry # 1, p. 1).

The victim met defendant in 2017, when she was a patient at Anna's Center for Women and Children ("Anna's"). Defendant worked at Anna's as a security guard. At the time, the victim was 15 years old

and defendant was 30 years old. (Docket Entry # 1, p. 2). Despite full knowledge of the victim's age, defendant initiated a sexual relationship with the victim. In August 2017, the victim and defendant lived together in various residencies ranging from the victim's mother's home, the defendant's car, hotels around Boston and the defendant's aunt's house. Defendant abused the victim through the length of the relationship.

At some point, defendant began prostituting the victim at 16 years old. Defendant posted advertisements for the victim online, and provided her with a cell phone to speak with prostitution customers.

In May 2018, defendant took the now 17-year-old victim to Philadelphia for the purpose of sex trafficking. (Docket Entry # 1, p. 3). By October 2018, the defendant arranged for the victim to work at a strip club using a fake identification card. Defendant kept all the income earned by the victim, only allowing her to spend it for breakfast and transportation to the strip club. When the victim told defendant she wanted to terminate their relationship, defendant threatened the victim to force her to resume prostitution.

Around the victim's 18th birthday, in August 2019, the victim became pregnant with defendant's child. The victim called the defendant's mother, who gave the victim money for a bus ticket back to Massachusetts, where the victim gave birth in December 2019. (Docket Entry # 1, p. 4).

After the birth of the victim's child, defendant convinced the victim to move back in with him, though she left after the defendant

became violent again. The victim moved back to Massachusetts and obtained a restraining order against defendant, which remains active.

DISCUSSION

I. Insufficiently Vague Indictment

Defendant seeks to dismiss the indictment on the bases that it is insufficient, vague, and only recites the general terms of the statute. (Docket Entry # 54, pp. 5-6).

The government argues defendant's motion to dismiss fails on the merits because the indictment conforms with the requirements of Rule 7(c) and gives adequate notice of the charges defendant must meet. (Docket Entry # 68, pp. 4-5). The government maintains language that recites the general terms of the statute is acceptable as long as the statute clearly sets forth the essential elements of the crime to be punished and provides the defendant with notice. Id. at 5.

The seminal case regarding indictment sufficiency is Hamling v. United States. 418 U.S. 87 (1974). The defendants in Hamling were indicted for mailing obscene content and contended that their indictment was insufficient because it charged them using only the statutory language, and argued that the definition of obscenity was vague. Id. at 97, 117. The court rebuked this argument, noting that "obscene" was a legal term of art with enough meaning to give the defendant notice. From here, the court held the indictment to be adequate, because the statutory language set forth all the elements necessary of the charged offense. Id. at 118. Hamling further

established an indictment to be sufficient when it contains: (1) the elements of the offense charged, (2) informs a defendant of the charges against which they must defend and (3) enables them to plead an acquittal or conviction without fear of double jeopardy. Id. at 117.

Hamling can be contrasted with Russell v. United States, where the indictment was deemed insufficient. 369 U.S at 754-768 (1962). The statute at issue in Russell, 2 U.S.C. § 192, required determining whether the questions to be asked were relevant to the subject under inquiry. Id. at 769. Because the indictment to the defendants only noted that the defendants did not appear for their hearing before the congressional committee and lacked the subject matter to be discussed, as required by §192, a grand jury could not determine whether the questions were relevant to the subject under inquiry. Id. at 764. Therefore, in the context of §192, the indictment served to these defendants was insufficiently detailed. Id. at 769.

Other cases follow the framework set out by Hamling. In United States v. Fernandez, the government indicted defendants for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) and drug-trafficking charges related to their involvement with the Mexican Mafia. 388 F.3d 1199, 1214 (9th Cir. 2004). Defendants in Fernandez challenged their indictment because the government failed to allege how violations under RICO were conducted. Id. at 1217. However, the Fernandez Court held that facts or theories alleging how interstate

commerce was affected by the defendants' conduct was not required in an indictment for RICO or drug-trafficking charges. Id. at 1218.

In United States v. Stepanets, the Court examined the indictments which charged defendants with an array of illegal conduct as principals and abettors in dispensing misbranded drugs in violation of the Food, Drug and Cosmetic Act. 879 F.3d 367, 369 (1st Cir. 2018). The Stepanets Court elaborated that the indictment was sufficient because it included the statutory bases for the counts, with key elements, factual backdrops and included dates, locations and of the illegal drug shipments in accordance with what was required with the Food, Drug and Cosmetic Act. Id. at 373.

Defendant argues "where guilt is dependent on a specific identification of fact, the indictment must do more than simply repeat the language of the criminal statute." 369 U.S. 749 (1962). This is misguided. This is where the specific information is needed for charging within the statute so much where it is an element of the statute. Hamling informs that for an indictment to be sufficient, it must: (1) contain the elements of the offense charged, (2) inform charges against which defendant must defend and (3) enable defendant to plead an acquittal or conviction without fear of double jeopardy. 418 U.S. 87, 117 (1974).

Defendant's indictment includes a list of statutes violated, and dates and location ranges when the statutes were violated. Listing statutes can be sufficient if the above elements are satisfied. Defendant's indictment is adequately clear, even if it repeats the

statutory language because it apprises him of the charges against what he must defend. See Hamling, 418 U.S. at 117-118. The language in the indictment notified defendant of an 8-month time frame and locations where the criminal acts occurred. See Stepanets. Defendant was charged with sex trafficking of a minor. §1591 outlaws sex trafficking of children by force, fraud, or coercion in plain language. See §1591 (stating "whoever … [affects] interstate or foreign commerce…and cause[s] the person to engage in a commercial sex act … shall be punished as provided in subsection (b)). It specifies defendant solicited Minor Jane Doe to engage in commercial sex acts through force in reckless disregard to Minor Jane Doe's age. The language also defines the terms used. While defendant argues that some terms, like "commercial sex act" are vague, these are legal terms of art defined within the statute. See Hamling, 418 U.S. at 117-118; See § 1591 (defining "commercial sex act" as any sex act on account of which anything of value is given to or received by any person). Such detail is sufficient to apprise defendant of the conduct which he is alleged to have committed.

Defendant's claim of insufficient indictment can be distinguished from Russell through the nature of the statutes violated. §192 at issue in Russell indicates that the questions to be asked must be detailed as well as the specific subject matter of the congressional inquiry. 369 U.S. at 764. However, §1591 does not bear such requirements. The statute is specific in the conduct barred, and provides relevant definitions for the terms of art. Even stating the statute, word for word, would apprise a defendant of the conduct

against which they must defend, especially because dates and time ranges are provided.

II. Insufficient evidence for grand jury to indict

Defendant further argues that the counts fail to specify how defendant's actions relate to or intended to engage in the charged crime. Defendant contends that the government has provided insufficient evidence for a grand jury to return an indictment and has not specified how the defendant committed the charged crimes.

When a defendant seeks dismissal of an indictment, the question is whether the allegations in the indictment are sufficient to apprise the defendant of the charged offence. The sufficiency of evidence to support the charge is not tested. Savarese, 686 F.3d at 7.

In United States v. Guerrier, the defendant was indicted for conspiring to violate the Hobbs Act, and moved to dismiss his indictment, claiming that the prosecutors produced no evidence during discovery that his acts affected interstate commerce. 669 F.3d at 3. However, the Guerrier court held that motions to dismiss cannot be used to test the sufficiency of the evidence behind an indictment's allegations. Id. at 4. Rather, a sufficient indictment handed down by an empaneled grand jury is enough to call for a trial of the charges on the merits where evidence can be tested. Id.

This is also seen in Costello v. United States, where defendant was indicted for attempting to evade payment of income taxes. 350 U.S. 359, 359. The defendant filed for a motion to dismiss based on an

affidavit stating there was no evidence before the grand jury which could have indicted him because it was based on hearsay. Id. at 360. In its holding, the court explained that the Constitution does not prescribe the kind of evidence upon which must be presented to grand juries to indict, and that grand jurors were not hampered by procedural or evidentiary rules. Id. at 362. The Fifth Amendment's grand-jury guarantee does not give defendants a right to a preliminary trial to determine adequacy of evidence underlying the indictment. Id. at 354. Therefore, a valid indictment itself is enough to call for a trial on the merits. Id.

C. Analysis

With the above discussion in mind, the competency and adequacy of the evidence is not at issue in the indictment stage Defendant's issue with his indictment is that the government has not specified how he had committed the charged offenses. This is tantamount to testing the sufficiency of the evidence at the indictment stage. See id. This claim then, must be dismissed.

In light of the above discussion, defendant's argument is insufficient to dismiss his indictment. The Superseding Indictment adequately apprised the defendant of the charges against him, which is all that need be considered in a motion to dismiss an indictment.

CONCLUSION

In accordance with the foregoing discussion, the court **RECOMMENDS** that the motion to dismiss (Docket Entry # 54) be **DENIED**.

HAMPTON COUNTY, STATE OF NEW JERSEY
MUNICIPAL COURT, CRIMINAL DIVISION

_____

STATE OF NEW JERSEY,

NO. CR 22-2074

v.

BRIEF IN SUPPORT OF MOTION TO DISMISS

WILLIAM STEWART
Defendant.

HEARING DATE: April 25th, 2022
TIME:

_____

This writing sample is a brief in support of a motion to dismiss I wrote for my first-year legal writing course based on my own research. In class, we were allowed to use unpublished cases to support our argument. My legal writing professor critiqued a previous draft.

Background Facts:

Mr. Stewart was panhandling off of North 6th Street near the East Brennan Savings Bank when Officer Smith was patrolling the area, and observed Stewart arguing with Ms. Robbins, the complainant. According to Ms. Robbins, she had repeatedly seen Mr. Stewart standing in front of the bank, asking for money for his basketball team and alleged three prior interactions. The first was when Mr. Stewart yelled "Thanks a lot, Miss Tight Wallet, I won't forget!" The second was when Mr. Stewart stood at the door and held out his hands, later yelling "Scrooge!" as she walked away. Finally, Ms. Robbins alleged that Mr. Stewart began a long change of "Scroooooooge" as she approached, and continued while she was at the ATM and until she was out of earshot. Witness statements provide that Mr. Stewart regularly insulted most, if not all bank customers.

The Municipal Court found probable cause for Mr. Stewart to be charged with aggressive panhandling in violation of section 120.08 of the Revised Ordinances of Brennan Township and harassment in violation of section 2C:33-4(a) of the New Jersey Code of Criminal Justice. The Court has ordered simultaneous briefing on two questions: ((1) is the defendant's alleged conduct sufficient to satisfy the elements of section 2C:33-4(a) and (2) does "secondary effects" doctrine survives the Supreme Court's decision in Reed v. Town of Gilbert, and if so, can it be applied to Brennan's aggressive panhandling ordinance.

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PRELIMINARY STATEMENT

This is a case about government overreach. It is a thinly-veiled attempt to criminalize behavior and a violation of Mr. Stewart's legitimate First Amendment rights. The State is attempting to make a conflicting argument, both claiming he had no other purpose for the communications to Ms. Robbins, and is therefore in violation of §2C:33-4(a) for harassment, while also conceding that Mr. Stewart was making communications for the purpose of panhandling under Revised Ordinance 120.08. N.J. Stat. Ann. §2C:33-4(a) (West); Complaint. By attempting to criminalize Mr. Stewart's behavior, the State is opening the door to an overflow of prisons and a waste of taxpayer dollars. The conduct alleged is insufficient for conviction under §2C:33-4(a) in light of far more egregious behavior that was not convicted for harassment under the same statute. The expert testimony is likewise unnecessary. The Supreme Court's decision in Reed v. Town of Gilbert clearly strikes down the Secondary Effects doctrine. Even if the Secondary Effects doctrine survives, it prescribes the current narrow application to adult entertainment brick and mortar venues. 576 U.S. 155, 163 (2015).

FACTS

According to Ms. Robbins, Mr. Stewart regularly panhandled in front of the East Brennan Savings bank for his basketball team and claimed three previous interactions with him. Tr. 4:9-11. On January 21st, Ms. Robbins alleged Mr. Stewart said "thanks a lot, Miss Tightwallet…" when she declined to donate. Tr. 4:17-21. On January 26th, Mr. Stewart yelled "Scrooge" as she walked away after using the ATM. Tr. 5:1-2. Then on January 28th, Mr. Stewart began a long chant of "Scrooge" as Ms. Robbins approached, continuing while she was at the ATM and until left. Id. It was only on the morning of February 1st, when Officer Smith approached the ATM while patrolling North 6th Street, did Ms. Robbins attempt to press charges. Tr. 3: 7-11. Witness statements mention that such comments were not relegated to exclusively Ms. Robbins, but to other bank customers as well. Tr. 5:7-9. Prior to Ms. Robbins, he called another gentleman "a stingy one-percenter". Id.

ARGUMENT

I. This Court should dismiss the harassment charge under NJ Statute §2C: 33-4(a) because the defendant did not demonstrate intent to harass in a location where privacy was reasonably expected.

In a motion to dismiss a criminal charge, while the facts will be looked at in favor of the State, the State must prove sufficient prima facie evidence to establish that a crime has been committed. State v. Fleishman, 891 A.2d 1247, 1249 (N.J. Super. Ct. App. Div. 2006).

Mr. Stewart has been charged with harassment in violation of §2C:33-4(a), which states "a person commits a petty disorderly offense if, with purpose to harass another, he… "makes… communications anonymously or at extremely inconvenient hours, or in offensively course language, or any manner likely to cause annoyance or alarm." In interpreting this statute, the Supreme Court of New Jersey has stated a violation of this subsection requires the following: (1) defendant's purpose in making the communication was to harass another person; and (2) the communication was in a manner that causes annoyance or alarm when it invades another's sense of reasonably expected privacy. State v. Hoffman, 695 A.2d 236, 242 (N.J. 1997).

A person acts with a purpose to harass only when there is no other purpose for the communication. Id. at 242. A person acts in a manner to cause annoyance or alarm when the communication invades another's sense of privacy where it would have been reasonably expected, and where that person was not authorized to be present. See id. at 246.

A. A person acts with purpose to harass, only when they have no other purpose for the communication.

A person acts with a purpose to harass when they have no other purpose for the communication. Id. In Hoffman, the Court outlined that the totality of the circumstances must be considered when a person is

convicted under 2C:33-4(a). Id. Without a specific intent to harass, a communication cannot be convicted under 2C:33-4(a), even in circumstances where the communication might be crude, hurtful, or annoying. See id. In practice, courts are reluctant to criminalize behavior. See id. For an action to be deemed "harassment", behavior must be "truly egregious." See id. As a result, there are many examples of vile communications that have not been criminalized under §2C:33-4(a) because they were found to have a purpose. For example, in E.M.B. v. R.F.B., the defendant called his mother, who sued him for harassment, a "senile old bitch."16 A.3d 463, 464 (N.J. Super. Ct. App. Div. 2011). The Court held the defendant's communication was based upon a perception of his mother's competence, so even though the phrase was hurtful, it was uttered without intent to harass. See id. at 466. Likewise, the court in Karins v. Atl. City declined to criminalize the communications of the plaintiff, who called an officer a racial epithet when the plaintiff was approached during a routine traffic stop. 706 A.2d 706, 718 (N.J. 1998). The Court willingly found that the communications were not intended to breach the peace, and were likely a comment on plaintiff's frustration at being subject to standard sobriety tests. See id. Even in State v. Burkert, where the defendant spread flyers containing the plaintiff's wife with handwritten pornographic comments throughout their mutual workplace, the State declined to find harassment under 2C:33-4(a), because the communication was technically aimed at their mutual coworkers. 135 A.3d 150, 156 (N.J. Super. Ct. App. Div. 2016). See also Bresocnick v. Gallegos 842 A.2d 276, 279 (N.J. Super. Ct. App. Div.) (holding that plaintiff's letter to his ex-wife had the purpose of expressing regret and affection, and could not be criminalized under §2C:33-4(a) even if it was annoying to the plaintiff). In these cases, the Court sought to find purpose for objectively vile communication to avoid criminalizing behavior.

These cases can be contrasted with what the court encountered in C.M.F. v. R.G.F., where the defendant stalked his wife, screamed epithets at her at their children's basketball games, and left a dead cat in her car. 13 A.3d 905, 907 (N.J. App. Div. 2011). Unlike Karins and E.M.B., the Court could not find the communication to be said without an intent to harass because of the repeated nature and history of the parties. See 706 A.2d at 718; See 16 A.3d at 464. The Court found the behavior exhibited truly

egregious since it was repeated, targeted, and combined with a history of domestic violence. Id. at 909-910. C.M.F. illustrates that the court will only find harassment when they cannot find any other purpose in the communication. See id.

B. A person acts in a manner to cause annoyance or alarm when the speech invades another's sense of privacy where it is reasonably expected.

A person acts in a manner to cause annoyance or alarm when the speech invades another's sense of reasonably expected privacy. See Hoffman, 695 A.2d at 246. Courts are reluctant to find a reasonable right to privacy in public locations. For example, in Winters v. Eierman, the defendant accosted the plaintiff in a public parking lot, grabbing her hand as she exited her vehicle without her consent to speak with her about their relationship. No. A-4883-06T1, 2008 WL 794654 at *1 (N.J. Super. Ct. App. Div. Mar. 27, 2008). While the Court conceded that the defendant "did not use good judgment", they declined to charge the defendant with harassment because he spoke to her in a public parking lot, where there was no reasonable expectation of privacy, despite the proximity to her private vehicle. Id. at 2-3. Likewise in Karins, the defendant was not charged with harassment because the plaintiff's privacy was not invaded. See 706 A.2d at 719. Because the incident occurred at a public event, there was no reasonable expectation of privacy, especially because the plaintiff, an on-duty police officer. See id.

The public is not like one's private home, where one can reasonably expect privacy, and where the court has been willing to criminalize unwanted communications as harassment under §2C:33-4(a). In K.G. v. B.N., the court found the defendant guilty of harassment because the defendant intruded upon the plaintiff's privacy while she was at her friend's home, by texting the plaintiff "I know you're inside… I'm going to beat everyone in that house up," and by showing up at the home unwanted, at 3 A.M. No. A-4051-19, 2021 WL 2099857, at *1 (N.J. Super. Ct. App. Div. May 25, 2021). Given the history of domestic violence, and the location, the Court found no other possible reason for the defendant's conduct other than to harass specifically because the plaintiff invaded the defendant's privacy. Id. at *3.

C. Defendant had a legitimate purpose for the communications to Ms. Robbins.

This court should conclude Mr. Stewart's conduct, while annoying, does not rise to the level of criminal activity prescribed by 2C:33-4(a). See E.M.B., 16 A.3d at 466 (explaining that offensive language alone cannot be prosecuted as harassment under 2C:33-4(a)). Mr. Stewart's conduct and communication was for the legitimate purpose of panhandling even if Mr. Stewart himself was inept at the task. The government concedes that Mr. Stewart had a purpose with their aggressive panhandling charge. Complaint. The tactic Mr. Stewart employed was meant to encourage people to donate, as he used this tactic on all of bank customers and was not specifically targeting Ms. Robbins. See Burkert (showing lack of specific targeting is not harassment); See Tr. 5:7-9. While Mr. Stewart may have utilized mildly offensive language, it was never obscene. See Karins (racial epithet); See E.M.B. ("senile old bitch"); See Burkert (pornographic comments on photos spread through work). Mr. Stewart's conduct does come close to the high bar that must be met to find a purpose to harass. See Complaint.

In contrast to the conduct of the defendant in C.M.F., there are no other circumstances in which Stewart and Robbins interact. See 13 A.3d at 909. While Stewart's conduct rose to the level of mild annoyance, it was not even close to the level of danger seen in C.M.F., and this can be proven by the fact that Robbins tried to press charges only when Officer Smith was patrolling the area, rather than feeling so alarmed that she called the police herself. See id.; See Tr. 54; 1-9.

D. Defendant did not invade privacy because he was on a public street where privacy would not be expected.

This Court should conclude Mr. Stewart was not violating Ms. Robbins's sense of privacy because one would not reasonably expect privacy on a public street. See Karins, 706 A.2d at 709 (showing privacy is not invaded when it is between two unrelated parties in a public event); See Winters (showing privacy is not invaded even when close to a pseudo-private location as long as in a public location). Public streets serve as a legitimate location for expression. Id. Mr. Stewart was not communicating at Ms. Robbins at home, where she would reasonably not expect to be communicated to by a stranger. See K.G 2021 WL 2099857, at *3 (showing the home to be a location where privacy is expected). Unlike Winters, Stewart

was five feet away from the ATM door, instead of right next to the car. 2008 WL 794654 at *1; Tr.6:21-23. Unlike Winters, Stewart never grabbed Robbins. 2008 WL 794654 at *1; Tr.6:21-23. Yet the Court in Winters declined to charge the defendant with harassment. Id. at 4. Given these facts, Mr. Stewart cannot be considered to be invading Robbins's privacy as long as he did not enter the ATM. See Complaint.

Because Mr. Stewart had a legitimate purpose for his message to Ms. Robbins, and communicated this message to Ms. Robbins where she could not reasonably expect privacy, Ms. Robbins's case lacks the prima facie elements of harassment for conviction under §2C:33-4(a). See Fleishman, 891 A.2d at 1249; See Hoffman.

II. The Secondary Effects Doctrine does not survive Reed v. Town of Gilbert, but even if it does, would not apply to aggressive panhandling statutes.

The First Amendment prevents governments from passing laws that prevents one's right to free speech, though certain restrictions may be allowed. Reed, 576 U.S. at 163. These restrictions fall under two categories: Content-based and content-neutral. Id. Speech regulation is content-based if a law applies to a particular speech because of the topic discussed or the idea or message expressed, and is usually subject to strict scrutiny. Id. Content-neutral restrictions targets all speech by time, place or manner and are subject to intermediate scrutiny. Id.

Forty years ago, the Supreme Court created the Secondary Effects doctrine ("the doctrine"), a deferential review established to prevent the negative "secondary effects" of speech rather than the speech itself. In these situations, intermediate scrutiny instead of strict scrutiny will be allowed. See City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 47 (1986). In Renton, the City set a zoning ordinance which prohibited adult motion picture theaters from being located within 1000 feet of any residential zone, church, park or school. Id. at 41. Because the purpose of this ordinance was not to restrict the speech itself, but the secondary effects of the speech, namely crime and blight, the Court allowed the ordinance to stand. Id. at 47. See also City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425, 430-

434 (2002) (Upholding a city ordinance prohibiting operation of multiple adult businesses in a single business under the secondary effects doctrine).

After Reed, there is a question as to whether the Supreme Court has abrogated the doctrine. See 576 U.S. at 165. In Reed, a Church looking to place temporary signs announcing services filed suit against the Town of Gilbert, claiming the town's sign ordinance violated the First Amendment. In striking down the Town of Gilbert's ordinance, the Court in Reed set out a two-part test that abrogated the doctrine, making panhandling statutes such as the one in the Township of Brennan unconstitutional. See id. at 161. Brennan's aggressive panhandling statute is content-based because it prevents "any solicitation made in person upon any… public…in which a person requests an immediate donation of money… from another person… within twenty (20) feet in any direction from an automatic teller machine or entrance to a bank." Twp. of Brennan, N.J., Rev. Ordinances Title 17, ch. 120 §8.

A plain reading of Reed and subsequent applications prohibit the implementation of the doctrine, but even if it still stands, is limited only to brick and mortar adult entertainment venues. See 576 U.S. at 156; See Free Speech Coal., Inc. v. Att'y Gen. United States, 825 F.3d 149, 159 (3rd Cir. 2016).

A. A plain reading of Reed v. Town of Gilbert and subsequent cases prohibits application of Secondary Effects Doctrine

In Reed, the Supreme Court struck down a sign code that regulated the displays of outdoor signs, and in doing so, put out a two-part test to determine what level of scrutiny to give a statute that regulates speech: (1) if the law is content based, it should be given strict scrutiny, and (2) if the law is content-neutral, and it can be given appropriate justification intermediate scrutiny is given. 576 U.S. at 165. Given this plain reading, the doctrine does not survive, because the Court simply asks whether a regulation is content-based, and if so prescribes strict scrutiny, regardless of motive. Id.

Subsequent cases in various circuit courts have applied the holding in Reed to suggest that the Supreme Court has eliminated the use of the doctrine. See Norton v. City of Springfield, Ill., 806 F.3d 411, 411 (7th Cir. 2015). Norton, which was litigated in the 7th circuit, utilized Reed's two-part test to find

a panhandling statute content-based, and therefore, subject to strict scrutiny. In doing so, the 7th circuit has eliminated the use of the doctrine. See id. at 412. Likewise, the 4th circuit in Cahaly v. LaRosa, proceeded with the analysis in Reed as it applied to a statute that regulated robocalls, which was enacted to prevented the secondary effects of infringing upon residential privacy. 796 F.3d 399, 405 (4th Cir. 2015). Because the statute banned all robocalls except for those based the consent of the called party, the court found the statute content based, and again, subject to strict scrutiny. Id. Even here in the 3rd circuit, the court in Free Speech questioned the standing of the doctrine, and further stated that Reed rejects any justification of a facially content-based law. 825 F.3d 149.

B. Even if the Secondary Effects doctrine survives Reed, it would not apply to aggressive panhandling statutes, and would have to undergo strict scrutiny.

Even if the Secondary Effects doctrine survived Reed, it would not apply to aggressive panhandling statutes. See Norton, 806 F.3d at 411. The doctrine has traditionally been applied to brick and mortar adult entertainment venues for the purpose of preventing crime and blight. See Free Speech, 825 F.3d at 161. In fact, in all cases where the Supreme Court has utilized Secondary Effects doctrine, the subject has always been brick and mortar adult entertainment venues. See Renton 475 U.S. at 44 (adult movie theatre), See Alameda Books 535 U.S. at 430 (adult book and video stores), See City of Erie v. Pap's A.M. 529 U.S. 277, 283 (erotic dancing locale).

Additionally, the Supreme Court has rejected the applicability of the doctrine to cases not involving adult physical establishments. See City of Cincinnati v. Discovery Network Inc., 507 U.S. 410, 430 (1993) (explaining there were "no secondary effects attributable to Discovery's news racks that distinguished them from the news racks Cincinnati permits to remain on the sidewalks); See Texas v. Johnson, 491 U.S. 397, 412 (1989) (striking down a statute prohibiting flag burning because it was based on the reaction of others to flag burning). See Reno v. Am. C.L. Union, 521 U.S. 844, 868 (1997) (rejecting the use of secondary effects doctrine in a case involving a "cyberzoning" statute to protect children from the effects of offensives speech on the internet). In Boos v. Berry, the court struck down a

statute prohibiting a display of signs and protests within 500 feet of foreign embassies. 485 U.S. 312, 315 (1988). In a concurring opinion, the Court specifically stated that the secondary effects doctrine laid out in Renton should only be applied to businesses that purvey sexually explicit materials. Id. at 334.

Even when panhandling statutes specifically reach the courts, they are often struck down because under the First Amendment, courts see solicitation of alms as core speech. See Speet v. Schuette, 726 F.3d 867, 878. Secondary Effects doctrine targets "fringe speech", such as adult entertainment or fighting words, which have been afforded less protection than informative or political speech. See Young v. American Mini Theatres, Inc., 427 U.S. 50, 70 (1976). Such protection is afforded because of the deep societal interest in the latter. Id. Insults directed at another person is closer to core speech, because it involves an opinion bordering political speech, regardless of its vulgarity. See Burkert 135 A.3d at 150 (holding that the defendant's "flyers" which included insulting comments was protected by the First Amendment). In Vill. of Schaumburg v. Citizens for a Better Env't, the Supreme Court held soliciting funds were within the First Amendment's protection. 444 U.S. 620, 632 (1980) ("…Charitable appeals for funds…involve a variety of speech interests… that are within the protection of the First Amendment."). Using this ruling, the Court in Speet held that an Illinois panhandling statute was unconstitutional because there was no difference in soliciting alms for an organization versus for oneself. 726 F.3d at 878. As a result, panhandling was held to be protected speech, and not subject to the Secondary Effects doctrine. Id.

To conclude, a plain reading of Reed and subsequent applications prohibit the implementation of the Secondary Effects doctrine. See 576 U.S. at 156. Even if the doctrine survives Reed, it is only limited to brick and mortar adult entertainment venues. See Free Speech, 825 F.3d at 160.

C. Panhandling is nothing like adult entertainment, which is the only place where Secondary Effects doctrine might survive.

Panhandling, especially for charitable causes, does not come with the secondary effects associated with adult brick and mortar venues. See Schaumberg, 444 U.S. at 636-637. Unlike Renton, where the

secondary effects the government was concerned with was an increase in crime and decrease in juvenile welfare, panhandling statutes have a different justification - namely that "not all those who beg are destitute, nor do all those who beg use the funds received for basic needs." See Renton, 475 U.S. at 48; Speet, 726 F.3d at 879. The secondary effects of both activities are radically different, with the former being associated with public safety and the welfare of children and the latter with public nuisance. See Cahaly, 796 F.3d at 405-406 (holding statutes meant to prevent public nuisance are subject to strict scrutiny). Mr. Stewart was panhandling for Brennan Community Center's basketball team on a public street. See Village 444 U.S. at 636-637 (holding that fundraising for a charitable purpose is protected speech); See Renton, 475 U.S. at 48; Tr. 6:14-16.

Because the Secondary Effects doctrine probably does not survive Reed and even if it does, has only ever been applied to brick and mortar adult entertainment venues, an expert witness is unnecessary. See Fleishman, 891 A.2d at 1249.

CONCLUSION

For the aforementioned reasons, the Defense respectfully requests that this Court grant the Motion to Dismiss for Mr. Stewart's harassment charge because even looking at the facts under the best light for the State, it has not met the prima facie elements of harassment under 2C:33-4(a). Mr. Stewart clearly had a purpose in his communications to Ms. Robbins, soliciting alms for the Brennan Community Center basketball team, and the State concedes as much by attempting to charge Stewart with aggressive panhandling. Because Mr. Stewart was panhandling in a public street, a reasonable person could not expect privacy. Mr. Stewart had purpose, and did not violate a reasonable sense of privacy, therefore the State lacks the prima facie elements of harassment under 2C:33-4(a).

Additionally, the Defense respectfully advises the Court that under the plain reading of Reed and the narrow application of Secondary Effects doctrine Brennan's aggressive panhandling ordinance must be struck down, and Mr. Stewart's aggressive panhandling charge must be erased. See 576 U.S. at 156; See Free Speech, 825 F.3d at 161.

Respectfully submitted,

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DATED: April _26_, 2022

TO: [Opposing Counsel]
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